

IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,
et al.,

Plaintiffs,

vs.

R.J. REYNOLDS TOBACCO
COMPANY, et al.,

Defendants.

_____/

Miami-Dade County Courthouse
Miami, Florida
Monday, 9:40 a.m.
November 30, 1998

TRIAL - VOLUME 149

The above-styled cause came on for trial
before the Honorable Robert Paul Kaye, Circuit Judge,
pursuant to notice.

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

APPEARANCES:

STANLEY M. ROSENBLATT, ESQ.

SUSAN ROSENBLATT, ESQ.

On behalf of Plaintiffs

DECHERT PRICE & RHOADS

ROBERT C. HEIM, ESQ.

SEAN P. WAJERT, ESQ.

On behalf of Defendant Philip Morris

COLL DAVIDSON CARTER SMITH SALTER & BARKETT

NORMAN A. COLL, ESQ.

On behalf of Defendant Philip Morris

ZACK KOSNITZKY

STEPHEN N. ZACK, ESQ.

On behalf of Defendant Philip Morris

CARLTON FIELDS WARD EMMANUEL SMITH & CUTLER

R. BENJAMINE REID, ESQ.

On behalf of Defendant R.J. Reynolds

JONES, DAY, REAVIS & POGUE

RICHARD M. KIRBY, ESQ.

On behalf of Defendant R.J. Reynolds

KING & SPALDING

MICHAEL RUSS, ESQ.

RICHARD A. SCHNEIDER, ESQ.

On behalf of Defendant Brown & Williamson

CLARKE SILVERGLATE WILLIAMS & MONTGOMERY

KELLY ANNE LUTHER, ESQ.

On behalf of Defendants Liggett Group

and Brooke Group

SHOOK HARDY & BACON

EDWARD A. MOSS, ESQ.

WILLIAM P. GERAGHTY, ESQ.

On behalf of Defendant Brown & Williamson

JAMES T. NEWSOM, ESQ.

On behalf of Defendant Lorillard

DEBEVOISE & PLIMPTON

ANNE COHEN, ESQ.

JOSEPH R. MOODHE, ESQ.

On behalf of Defendant The Council for Tobacco Research

(APPEARANCES - Continued)

GREENBERG TRAURIG HOFFMAN LIPOFF ROSEN & QUENTEL
DAVID L. ROSS, ESQ.

On behalf of Defendant Lorillard

MARTINEZ & GUTIERREZ

JOSE MARTINEZ, ESQ.

On behalf of Defendant Dosal Tobacco Corp.

and Tobacco Institute

KASOWITZ BENSON TORRES & FRIEDMAN

AARON MARKS, ESQ.

NANCY STRAUB, ESQ.

On behalf of Defendants Liggett Group

and Brooke Group

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

1

I N D E X

2

WITNESS PAGE

3

MICHAEL CUMMINGS, Ph.D.

4

Direct by Mr. Rosenblatt 16280

5

6

7

8

E X H I B I T S

9

PLAINTIFFS'	OFFERED	ADMITTED	FOR ID
EXHIBITS	PAGE	PAGE	PAGE

10

None

11

12

E X H I B I T S

13

DEFENDANTS'	OFFERED	ADMITTED	FOR ID
EXHIBITS	PAGE	PAGE	PAGE

14

None

15

16

17

18

19

20

21

22

23

24

25

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

1 (Whereupon, the following proceedings were had:)

2

THE COURT: Good morning, all. Have a seat,
please. I see everybody made it back in time.

4

Okay. What do we have this morning?

5

MR. ROSENBLATT: Well, I wanted to check on
the status of what we discussed at sidebar on
Wednesday.

8

THE COURT: Give me a clue, a key word or
something. I'll remember it.

9

10 MR. ROSENBLATT: Ad campaign, national ad
11 campaign.
12 THE COURT: Okay. Got it. We discussed so
13 many things sidebar.
14 Yes, you were supposed to make a report.
15 MR. HEIM: I have no report as of yet, but
16 I'm working on it.
17 MR. ROSENBLATT: Well, I just don't want to
18 have a situation where I pick up a paper one day and
19 there is a full-page ad in it.
20 MR. HEIM: Judge, I'm expecting to have a
21 report shortly. It takes a while to get this. But I'm
22 working on it, and I will have a report.
23 THE COURT: Okay. I didn't expect things
24 would happen, especially over the holiday, that quick.
25 Somebody is going to have to be at work in the office
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

6

1 and do whatever it is they have to do. So do whatever
2 you can.
3 All right. What else do we have this
4 morning?
5 MR. NEWSOM: We have several things to take
6 up before Dr. Cummings testifies.
7 First, yesterday we saw for the first time --
8 THE COURT: Is the doctor here?
9 Would you step outside for just a moment,
10 please, sir?
11 (Dr. Cummings left the courtroom.)
12 MR. NEWSOM: We were told last Wednesday, and
13 yesterday we saw for the first time, about 50 or so
14 slides that he proposes to use during his testimony.
15 Most of the slides are objectionable for
16 various reasons, and we want to be sure that we can
17 either take up the slides now and go over them so we
18 can determine the objections before they're shown to
19 the jury, or as we go along, before any slide is shown
20 to the jury, that we have an opportunity to object.
21 Because if it's shown to the jury, it's too late.
22 THE COURT: Okay. Now, he is a what?
23 MR. ROSENBLATT: He is a Ph.D. He is a
24 cancer research specialist at Roswell Park Cancer
25 Institute in Buffalo, which is probably the oldest
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

7

1 comprehensive care center in America.
2 THE COURT: His specialty is what?
3 MR. ROSENBLATT: Cancer, cancer research.
4 His degree is in health behavior. He testified in the
5 Broin case.
6 THE COURT: I don't care where he testified.
7 The point is, his expertise is --
8 MR. ROSENBLATT: His expertise is in tobacco.
9 His expertise is -- and he's run smoking cessation
10 courses for over 14 years. His expertise is basically
11 in everything relating to tobacco and health.
12 THE COURT: All right. What would the slides
13 be about?
14 MR. ROSENBLATT: Your Honor, I don't intend
15 to get into the slides right away. And at some point
16 we will take a break and go through them, and I will

17 have him explain them to you, what they are.
18 THE COURT: Okay. Because I really don't
19 want the jury to be sitting in there and waiting.
20 MR. NEWSOM: The slides involve a wide
21 variety of topics: Eclipse cigarettes, Accord
22 cigarettes. There are pictures of ads, pictures from
23 articles. There are quotes from documents that are not
24 in evidence.
25 THE COURT: All right. Let's get the
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

8

1 foundation laid first and then we will go into that.
2 It's easier if I go ahead and find out what he is all
3 about, then we can take a break and find out what the
4 testimony and the slides are going to be all about.
5 Right now I have no idea what he's going to testify
6 about, so it's hard to talk about the slides.
7 So let's go ahead, and with counsel's request
8 that we take the break at the appropriate time, then we
9 can do that.
10 MR. NEWSOM: Okay. I'm not sure if they
11 propose to have Dr. Cummings testify on causation
12 issues. He's listed in his disclosure as possibly
13 testifying about causation. But each of the diseases
14 he would propose to testify about, they've had three,
15 four, five, six, eight other witnesses already testify
16 about those same diseases. So his testimony with
17 respect to any causation issue would be cumulative.
18 THE COURT: What about that?
19 MR. ROSENBLATT: We don't agree that it's
20 cumulative, but we do not intend to have him address
21 causation specifically.
22 THE COURT: Okay.
23 MR. NEWSOM: And then we have gotten a list
24 of documents that he says he relies on. None of those
25 documents have been admitted in evidence, have not been
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

9

1 discussed on document objection days and so forth.
2 Each of those will have to be taken up I guess as they
3 come up, because they were not previously made.
4 THE COURT: I guess so. When they come up,
5 they come up.
6 MR. NEWSOM: I think Mr. Moodhe has --
7 MR. MOODHE: I don't know to what extent
8 Dr. Cummings is going to be testifying about CTR today,
9 but I do know Dr. Cummings is aware of the status of
10 CTR being in dissolution. And given the agreement of
11 counsel before, I would want that undertaken again,
12 that Dr. Cummings will not volunteer that information
13 to the jury absent the --
14 THE COURT: I lost you someplace. CTR is
15 dissolved?
16 MR. MOODHE: Is in dissolution pursuant to
17 court-ordered settlement.
18 THE COURT: That's a settlement issue?
19 MR. MOODHE: Right.
20 THE COURT: I think counsel knows not to get
21 into it. He's aware of it himself, is he not?
22 MR. MOODHE: I don't know that the doctor is
23 aware of the instruction not to address it, and that

24 was my concern.
25 THE COURT: Okay. If you want to discuss it
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED
10

1 with him, you can do so.
2 MR. ROSENBLATT: I will. I'll simply mention
3 it again, not to mention the present status of CTR.
4 He's going to talk about CTR, but I will caution him
5 again not to volunteer that they are being dissolved
6 pursuant to a settlement.
7 THE COURT: All right.
8 You can bring the jury out, then.
9 THE BAILIFF: Bringing in the jury.
10 (The jurors entered the courtroom.)
11 THE COURT: Good morning, folks.
12 JURORS: Good morning.
13 THE COURT: Have a seat, please.
14 Everybody enjoy your holiday?
15 JURORS: Yes.
16 THE COURT: Anybody watch anything on TV,
17 read anything in the papers, TV, otherwise, any
18 discussions with anybody about the case or any of the
19 issues involved?

20 JURORS: No, sir.
21 THE COURT: I guess we can proceed.
22 MR. ROSENBLATT: Dr. Cummings?
23 Thereupon:
24 KENNETH MICHAEL CUMMINGS, Ph.D.
25 having been called as a witness, was duly sworn,
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED
11

1 examined, and testified as follows:
2 DIRECT EXAMINATION
3 BY MR. ROSENBLATT:
4 Q. Dr. Cummings, please tell the members of the
5 jury your full name and your present address.
6 A. It's Kenneth Michael Cummings.
7 [DELETED]
8 Q. Now, you are a Ph.D., that's why I'm calling
9 you doctor. You are not an M.D.?
10 A. That's correct.
11 Q. Now, going backwards in time, you received
12 your Bachelor of science degree in health education
13 from not the University of Miami, Miami University in
14 Oxford, Ohio.
15 Tell us what the field of health education
16 entails.
17 A. Well, I was trained actually to be a health
18 teacher, to do teaching of health education in public
19 schools, and so I had a lot of background in biology,
20 chemistry, aspects of first aid, you know, all the --
21 the whole realm of coverage of things that are
22 generally taught in a school curriculum relative to
23 health, also physical education.
24 Q. Okay. And then you received a Master's
25 degree also in health behavior; is that correct?
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED
12

1 A. That's correct. This was at the University

2 of Michigan, Master's of public health. It was the
3 department of health education and health behavior.
4 Basically that was a degree in more of psychology of
5 consumer behavior related to health.

6 And the training in School of Public Health
7 is for people who are going to go work in the health
8 department, county health department or state health
9 department. And I spent two years at the University of
10 Michigan getting my Master's in public health and took
11 courses in epidemiology, statistics, psychology, survey
12 research methods, consumer behavior, communications.

13 Q. When started the program toward obtaining
14 your Master's degree, did you have in mind at that time
15 that you were going to go forward and get a Ph.D.?

16 A. No. It was actually while I was doing my
17 Master's, I got interested in some of the research work
18 that some of my professors were involved in, and had an
19 opportunity, because I had done rather well as a
20 graduate student and received a scholarship from the
21 University of Michigan to continue on for my Ph.D.,
22 which I did over about a three and a half year period.

23 Q. So you remained at the University of Michigan
24 both to get your Master's and then your Ph.D., correct?

25 A. That's right.

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

13

1 Q. Okay. Now, what did you do basically as a
2 professor or teacher with your degree in public health
3 after you received your Ph.D.?

4 A. Well, the first job -- actually, as I was
5 finishing up my Ph.D., I worked at Wayne State
6 University in the medical school there teaching a
7 course in program evaluation. I was doing work on
8 actually blood pressure control, was a big issue.
9 Wayne State is located in Detroit, and got involved
10 with a group of public health people who were involved
11 in doing basically hypertension control.

12 We did a massive survey in the city of
13 Detroit where we actually went and randomly selected
14 households, and then individuals within households, to
15 measure how many people had hypertension, which
16 required actually going out and doing a blood pressure
17 measurement, asking a series of questions.

18 It was quite a large project. It was funded
19 by the National Heart, Lung and Blood Institute. That
20 sort of paid the bills.

21 I taught some courses there at Wayne State
22 for about a year and was offered an opportunity to go
23 to the Roswell Park Cancer Institute in Buffalo, where
24 I've been for the past 18 years.

25 Q. Now, you've been at the Roswell Park Cancer

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

14

1 Institute since 1981; is that correct?

2 A. That's correct.

3 Q. Tell us first generally what the -- that's in
4 Buffalo?

5 A. That's right.

6 Q. Okay. Tell us generally speaking what the
7 Roswell Park Cancer Institute is.

8 A. Well, Roswell Park was actually a physician

9 in Buffalo, and he created a hospital for cancer
10 patients. In fact, Roswell Park Cancer Institute,
11 which is a state institution -- beginning in the 1940s
12 the state of New York took over the institute and began
13 funding it. It's an institution and hospital that's
14 dedicated solely to the research and treatment of
15 cancer.

16 It's the oldest cancer research facility in
17 the country. It's one of the largest comprehensive
18 cancer centers in the United States today. We have
19 currently 150 beds, over 1500 employees, 250 or so
20 M.D.s or Ph.D.s. Our M.D.s that come also treat cancer
21 patients, but they're also involved in doing clinical
22 research as well.

23 Roswell Park has a very long history of
24 research in many areas including tobacco. Some of the
25 first early tobacco work was done at Roswell Park.

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

15

1 Q. Now, is the Roswell Park Cancer Institute,
2 for example, older than M.D. Anderson in Houston and
3 Sloan-Kettering in New York?

4 A. Yes. We celebrated our 100th year
5 anniversary this year.

6 Q. I see, by your curriculum vitae, you list
7 yourself as a cancer research scientist. So tell us
8 about that. What you are involved in, what you are
9 researching, and what you are hoping to achieve through
10 your research.

11 A. Well, when I came to Roswell Park, I was
12 hired as a cancer research scientist. I also teach
13 graduate courses there. We have a graduate program as
14 part of our program at Roswell Park Cancer Institute.
15 But as a senior research scientist, I'm involved in
16 doing research on causes of cancer, and actually since
17 my area is in health behavior, it's mainly dealing with
18 behaviors that relate to things that people can do to
19 prevent cancer.

20 So not smoking would be one obvious thing.
21 But also, you know, early detection of cancer, cancer
22 screening, identification of symptoms, participation in
23 clinical trials, just general information about what --
24 the causes of cancer, health communication. There is a
25 lot of confusion out there that everything causes

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

16

1 cancer, which is not true, and we do know a lot about
2 what causes cancer, and there are areas that we don't
3 know.

4 So we have a whole scope of research that I'm
5 actually now directing, as director of the program, in
6 cancer prevention, epidemiology and biostatistics.

7 Q. Now, you are the director of the smoking
8 control program at Roswell Park. Tell us about that,
9 the smoking control program, and what you do as
10 director.

11 A. Well, Roswell Park has a very, very long
12 history of work in tobacco use. In fact, back in the
13 early 1930s, they started collecting histories on the
14 smoking habits of patients coming into our hospital,
15 which were later published as demonstrating the link

16 between smoking and lung cancer.
17 And some of the early tar and nicotine work
18 were done at Roswell Park, the mouse painting
19 experiments. When I came there, basically picked up on
20 the tradition of work in the area of tobacco. Many
21 people call our institution looking for assistance in
22 quitting, and we initiated a stop smoking clinic
23 basically for the public in 1982 and have been running
24 that program.

25 I do that program every month, have clients,
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

17

1 I have probably worked with five or six thousand
2 smokers over the years coming to our clinics. We have
3 run nicotine patch clinics. When the nicotine patch
4 came out, we ran a program just for smokers coming to
5 our clinics.

6 So we do all kinds of research on -- related
7 to tobacco, and including surveillance of tobacco, what
8 new products are out. We've been looking at the design
9 of new products such as Eclipse and Accord, and
10 Winstons. There is a claim that Winston has no
11 additives, so we're looking at it.

12 MR. KIRBY: Objection, Your Honor. May we
13 approach?

14 (Proceedings were had at sidebar.)
15 BY MR. ROSENBLATT:

16 Q. Dr. Cummings, you were in the middle of your
17 answer basically explaining what you do as the director
18 of the smoking control program, matters you look into
19 and that kind of thing. Please continue.

20 A. Okay. As I mentioned, we look at cigarette
21 designs, a whole range of issues related to tobacco,
22 almost anything; write grants in this area. I have a
23 number of research projects going on. We've done
24 studies on pharmacotherapy for people trying to quit
25 smoking, as clinical trials to evaluate whether any of

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

18

1 these therapies work; surveys of who smokes, from kids
2 to adults; and then, of course, we've done recently up
3 in -- as I mentioned, I was doing some work on
4 cigarette design, some of the different products that
5 are out on the market: Eclipse, Accord, Winston.

6 In fact, we've created a surveillance system
7 to look at all the new products, because there's really
8 nobody else out there doing this other than the tobacco
9 companies.

10 Q. In terms of the smoking control program, when
11 you say over the years you've dealt with five or six
12 thousand smokers who were trying to quit, what is your
13 hands-on role -- do you have any hands-on role in terms
14 of recommending to them how they quit and actual
15 therapies they should engage in, and if so, tell us
16 about that.

17 A. Yeah, I mean, I run the clinics. I got
18 started doing this -- I had a student actually that
19 came and worked with me as an intern. That's how I
20 sort of got involved in running the smoking clinics.

21 The student leaves after the semester and
22 people still call up for our clinic. Our clinic is now

23 the largest clinic operating in the western New York
24 area, has been for the last 15 years.

25 And I do the programs. It's become a
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

19

1 laboratory. A lot of the research I've done and papers
2 I've written have been based on patients that come to
3 our clinic.

4 I've also been involved in major, large-scale
5 programs done across the country. I was a practical
6 investigator on the so-called COMMIT, Community
7 Intervention Trial for smoking cessation, which was a
8 massive, 42 million dollar effort by the Cancer
9 Institute, to try to intervene in communities to lower
10 the smoking rates by helping people quit smoking;
11 particularly heavy smokers who tend to have a higher
12 risk of developing smoking-related illnesses. We did a
13 lot of things: trained physicians, worked with
14 workplaces, worked directly with smokers. So I have a
15 lot of contact.

16 I also worked quite a bit with prevention.
17 In fact, a lot of my work has focused more recently on
18 the prevention end of things, because it's very
19 discouraging, quite frankly, with many smokers. It's
20 very hard to get them to quit and stay quit, and
21 obviously an ounce of prevention is worth a pound of
22 cure. Getting the kids not to start is critical.

23 So I do a lot of programs myself. I probably
24 do 100 presentations a year to various groups, most of
25 which are to school children, but also health

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20

1 professionals, and of course the smokers who come to
2 our clinic every month.

3 Q. Now, you've got a teaching role at the State
4 University of New York. What relationship is there, if
5 any, between the State University of New York and your
6 institution, the Roswell Park Cancer Institute?

7 A. Well, very close relationship. I'm a
8 professor in the department of social and preventive
9 medicine at the university, and I teach courses in
10 their graduate program. I have graduate students that
11 I've directed over the years.

12 In fact, one of my graduate students is
13 currently the chief of epidemiology for the Office on
14 Smoking and Health, Dr. Gary Giovino. He was a student
15 of mine.

16 And basically, I had very close interaction
17 with the university. Our graduate division is actually
18 a division. The graduate degrees that our students get
19 are really through the State University of New York at
20 Buffalo.

21 I also lecture to a lot of other schools,
22 Niagara University. We have many colleges in the area
23 and I do frequent lectures to students at almost all
24 the universities.

25 Q. What role have you had with respect to any

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

21

1 Surgeon General's Reports?

2 A. Well, I've served as a reviewer to a number
3 of the reports, and also a contributor. I contributed
4 to the 1989 Silver Anniversary report. That was the
5 25th anniversary report, the silver cover. I wrote a
6 chapter there on the history of smoking cessation
7 methods, what had changed over 25 years.

8 And then in 1994, I contributed a section to
9 the Surgeon General's Report that was on smoking and
10 youth, having to do actually with some surveys and
11 public attitudes towards policy measures to restrict
12 youth smoking, things like restricting advertising,
13 sale practices of the industry and so on.

14 Q. And I understand you actually made a
15 contribution in terms of original writing to the '89
16 and '94 Surgeon General's Reports.

17 With respect to the Surgeon General reports,
18 where you served as a reviewer, what was your function
19 there?

20 A. Well, they would send chapters -- I did this
21 for the '88 report on nicotine addiction. I also did a
22 section of the '90 report, and most recently a report
23 on smoking and minorities. And was sent a chapter, or
24 several chapters actually in the case of the last
25 report, which I would go over, review in terms of its

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

22

1 scientific merit, offer substantial comments, and send
2 those back to the Office on Smoking and Health.

3 And there were other reviewers who would look
4 at those reports or those chapters as well, and they
5 would compile that, give that back to the author, and
6 they would be asked to rewrite it.

7 In fact, being a contributor, I know this
8 process, because it's rather painful when somebody
9 critiques your work and you have to go back and
10 re-write it.

11 But it is a way of making sure you have the
12 most up-to-date science, and the conclusions that are
13 reached are conclusions of not just one individual, but
14 based on the weight of evidence in fact that exists in
15 the scientific community. That's how those reports are
16 prepared.

17 I also prepared a report -- I was asked to
18 serve on a committee -- the Institute of Medicine,
19 National Academy of Sciences put out a report in 1994
20 as well on smoking and youth called: Nicotine
21 Addiction: Growing up Tobacco-Free.

22 And this was a report looking at the whole
23 issue of youth smoking, whether kids get addicted, when
24 they get addicted, the effects of advertising, pricing
25 effects on kids, product regulation.

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

23

1 It covered a whole realm of things, because
2 those reports are typically written for Congress as
3 what would be the regulatory or policy implications of
4 some of the findings from the scientific community.
5 And this was done in conjunction because the '94 report
6 came out from the Surgeon General, and the IOM
7 Institute of Medicine report was more the policy piece
8 to that.

9 Q. Dr. Cummings, you know, as I go through your
10 CV, there is a section called Professional and
11 Community Services. There is a listing.
12 You were a member of the committee on
13 preventing nicotine addiction in children and youths,
14 Institute of Medicine, 1993, 1994. What was that all
15 about?
16 A. That was the Institute of Medicine --
17 Q. That you just described?
18 A. -- work. Yes.
19 Q. Now, you've been a reviewer for a publication
20 called: Addictive Behaviors. What kind of publication
21 is that?
22 A. Well, it's a publication on just what it
23 says, addictive behaviors. Authors will send in
24 articles on a whole range of drug-related issues:
25 tobacco, alcohol, heroin, cocaine, a whole range of
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

24

1 things.
2 And I've reviewed articles for them. I've
3 published in that journal. The work that I do for them
4 relates to the tobacco work, because that's my
5 expertise.
6 Q. And you've been a reviewer for the Journal of
7 the American Medical Association; is that correct?
8 A. Yes, on numerous occasions.
9 Q. So even though you're not technically an
10 M.D., you're a Ph.D.; you've acted as a reviewer for
11 the Journal of the American Medical Association?
12 A. That's right.
13 Q. Now, what is the relationship between Roswell
14 Park Cancer Institute and the New York State Department
15 of Health?
16 A. Well, we're rather unique as an institution.
17 As I said, we're actually part of the New York State
18 department of health. Roswell Park is a line item in
19 the health department budget. I am a state health
20 department employee, as are all the physicians and
21 Ph.D.s and all the employees of Roswell Park who are --
22 half our employees are actually supported on grants,
23 and half are state employees. I happen to be a state
24 health department employee.
25 So that's the unique relationship, and it's a
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

25

1 great investment for New York State, quite frankly.
2 They are investing in cancer research and treatment.
3 We take care of cancer patients.
4 We have devised methods for early detection
5 of cancer, the PSA test, which is widely used now for
6 detection of prostate cancer, was developed at Roswell
7 Park.
8 Similarly, early treatments for childhood
9 leukemia were developed at Roswell Park Cancer
10 Institute, and some of the very earliest studies on
11 smoking and cancer came out of Roswell Park Cancer
12 Institute.
13 In fact, in 1950 an epidemiologist at our
14 institution, a guy by the name of Dr. Morton Levin,
15 published a report in the American Medical Association

16 based on a thousand patients that came into Roswell
17 Park, where he collected smoking histories and
18 demonstrated the fact that the lung cancer patients
19 were much more likely to report a history of smoking
20 than the patients who did not have lung cancer.

21 Q. Can you give us even a rough estimate as to
22 the number of articles which have appeared in the
23 literature on the subject of the relationship between
24 smoking and cancer, smoking and other diseases?

25 A. Well, you get a pretty good idea as you see
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

26

1 these Surgeon General's Reports. They get bigger and
2 bigger and bigger, because they, in fact, are just
3 accumulating the evidence that is available on the
4 link. But a rough number -- I would say it's well in
5 excess of 50,000 and probably closer to 100,000
6 articles in the scientific literature on this topic at
7 this point. In fact, the Surgeon General, I think in
8 one of their more recent reports, said it's the most
9 studied cause of disease in history, in medical
10 history.

11 Q. Why do you think that is?

12 A. Because it causes the most problems. A third
13 of our patients at our hospital are there because of
14 smoking.

15 Q. A third of your cancer?

16 A. One-third of our cancer patients. I mean, if
17 I had a vaccine today to prevent a third of cancer,
18 eliminating smoking would be it.

19 And that's why I devote my and have devoted
20 my career to deal with the issue of tobacco and my
21 research on tobacco, and assisting people in getting
22 off this addiction.

23 Q. Now, Dr. Cummings, in your CV there's a
24 section Grants and Contracts. Let me ask you about a
25 few of them.

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

27

1 Behavioral Methods to Aid Smokers in
2 Quitting, and there is a Part 1, Part 2 and Part 3.
3 Tell us about that.

4 A. Well, this was a study -- actually, it was a
5 study I did with Dr. Giovino. It was his doctoral
6 dissertation, and we managed to have a lot of money so
7 he could have some money to live on. Graduate students
8 don't need a lot.

9 But this was a study that we actually did
10 with physicians. It was a training program where we
11 trained family physicians to identify and report
12 whether their patients smoke.

13 Amazingly, we had done a little record search
14 of one of our family practice units, and had learned
15 that many of the patients who smoked, there was no
16 evidence in their medical record they were smokers, and
17 there was very little evidence that they were being
18 advised to quit and being offered treatment methods.

19 So Dr. Giovino devised a system to identify
20 the smokers. He interviewed the smokers in the waiting
21 room, and then actually went and did a training program
22 with the medical providers.

23 Half of them got his training and half
24 didn't, and he was basically seeing whether the
25 training made any difference in whether those
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

28

1 physicians would go back and do a better job
2 identifying and counseling their patients.
3 It had a slight effect. It was not a huge
4 effect. One of the things that came out of that,
5 though, one of the more interesting findings, and we
6 wrote a couple of papers on this, since this particular
7 family practice clinic was located on the east side of
8 Buffalo -- and the east side of Buffalo is a very low
9 income population and has a high percentage of
10 African-American patients, and he had interviewed these
11 patients, and like most studies, actually in smoking,
12 people never ask the brand. But he asked the brand.

13 MR. HEIM: Your Honor, I'm going to object to
14 this as nonresponsive and hearsay.

15 MR. ROSENBLATT: Explaining a survey, a
16 grant, that he was personally involved in.

17 THE COURT: Yes. I think we're talking in
18 general terms here. Just explain the details of the
19 survey. So overruled as far as it goes.

20 If it gets any more specific than that, then
21 maybe we'll review it.

22 A. (Continuing) Anyway, he collected the data
23 on brand use, and we found -- we had other survey data
24 on brand use from people that called our telephone
25 hotline, most of whom were Caucasian, were not

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

29

1 African-American.

2 We found a huge difference in the brands
3 smoked, mainly with menthol brands being the preferred
4 brands among African-American smokers. In particular,
5 three particular brands, Kool, Salem and Newport, which
6 was alarming to us, because we had done this tracking
7 with different brands.

8 There are over 300 different brands on the
9 market, and yet we found a very strong predilection for
10 menthol cigarettes, and nobody really -- we started
11 looking in the literature: Had anybody ever written
12 anything about this? And there was very little in the
13 literature.

14 That got us interested in some of the
15 advertising and marketing to minorities. I've done
16 some other research on that topic as well. But that
17 was sort of the side light of that particular -- that
18 particular study.

19 Q. Now, then, looking at another grant:
20 Environmental and Policy Determinants of Adult and
21 Adolescent Tobacco Behaviors in 22 North American
22 Communities.

23 What did that involve?

24 A. Well, this is actually a grant we got from
25 the Robert Wood Johnson Foundation to do a secondary

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

30

1 data analysis of data that had been collected in this

2 huge National Cancer Institute committee trial that I
3 had mentioned. Federal government spends a lot of
4 money collecting these data, and they often, after the
5 study is done, they don't do much with the data.

6 So we went and wrote a grant to get money so
7 we could have time to analyze the results and write up
8 a paper. And we did. We've written up in fact an
9 entire monograph. An entire issue of the journal is
10 devoted to papers that we wrote up that look at the
11 effects of cigarette pricing on tobacco consumption,
12 brand switching among adults.

13 We had unique data. We collected information
14 on smokers in 1988, and then again in 1993. We were
15 able to see how many of those people had quit, how many
16 had died, and how many were still smoking. And we got
17 interested, because of the -- we had data on brands, to
18 say: Well, how many of 8 Marlboro smokers, for
19 example, that we had in 1988, were still smoking
20 Marlboro five years later, or had they switched to
21 Camel or Winston or some other kind of other generic
22 brands out on the market?

23 We found actually there was a very -- very
24 little switching, quite frankly. People were fairly
25 brand loyal. In fact, the amount of switching was less

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

31

1 than 10 percent per year on an annual basis.

2 But the switching that was going on was
3 almost all driven by economics. We saw that
4 particularly heavy smokers were and low income smokers
5 were switching to generic or discount brands. And in
6 fact, people who switched were less likely to quit, and
7 seemed like the introduction to discount brands, which
8 really had not been part of the marketing of tobacco
9 products prior to the 1980s, because almost all brands
10 were the same price, there was a price war that went on
11 in the industry, and this really culminated during the
12 time that we were in the field with COMMIT. So we
13 wrote up a paper on that.

14 We had another paper that we did --

15 MR. HEIM: Your Honor, if I may, might we
16 approach on these answers?

17 THE COURT: Yes, I guess so.

18 (Proceedings were had at sidebar.)

19 BY MR. ROSENBLATT:

20 Q. Do you remember where you were? I think you
21 were discussing your findings and research in
22 connection with the general topic of --

23 A. One of my grants, I believe.

24 Q. Correct.

25 A. And I was going through the litany of papers

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

32

1 that we had published in the Journal of Tobacco --

2 Q. Had you finished?

3 A. There were six papers. Some of them dealt
4 with the trends in smoking.

5 One of the more interesting things we found
6 is the trends in smoking between 1988 and 1993 were
7 declining among adults, but increasing among children.
8 We had surveyed ninth graders in 1990, in these 22

9 communities, and we also -- we surveyed another group
10 of ninth graders in the public schools in these
11 communities in 1992, and we found that smoking rates
12 were going up among ninth graders.

13 Among adults, the decline in smoking was not
14 uniform. It was -- there were some differences by age,
15 and every community that we looked at, in fact, when
16 you looked at people over the age of 50, basically
17 there was a decline in smoking.

18 So people were quitting smoking. But there
19 was not true -- in fact, it was pretty much a wash when
20 you looked at the 18 to 24 age group. Half of the
21 community saw an increase and half saw a decrease. So
22 the decline in smoking was very much related to age.

23 So we got curious. Well, what were the
24 predictors of quitting? After all, if you had done
25 this massive study on people trying to quit smoking --

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

33

1 in fact, the largest study ever done in the public
2 health community was quitting smoking, this particular
3 project.

4 So we published some papers and one of the
5 topics was Predictors of Smoking. Among a cohort of
6 adult smokers followed over five years, we found over
7 that five-year period, when we asked the people in
8 1988, all smokers, whether they wanted to quit, 70
9 percent said they had a desire to quit smoking.

10 When we went back five years later, only a
11 small fraction of those people had actually been
12 successful in quitting, although a large number had
13 tried.

14 In fact, a significant number of people had
15 reported trying to make a quit attempt. And we were
16 very careful about defining a quit attempt. You had to
17 quit for at least 24 hours, be off of the cigarettes.

18 The reasons for quitting. We asked the
19 people who were successful: Why did you quit? And
20 then the people who tried to quit: Well, why did you
21 try to quit? And the overwhelming, number one reason
22 that people were trying to quit and get off cigarettes
23 was health concerns, which probably explains why we
24 found the higher quit rates among the older people, age
25 40 and older. There were many more successful quitting

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

34

1 attempts, and it's probably related to some of the
2 health problems you tend to see in people who are over
3 the age of 40.

4 And also people in our survey data asked
5 these questions about the health problems that smokers
6 had experienced and the experience of health symptoms,
7 coughing, wheezing, things of that nature, were
8 correlated with more serious efforts at quitting.

9 Q. You know, Dr. Cummings, it occurs to me the
10 jury has heard a lot of witnesses talk about, you know,
11 grants, where a scientist at an academic institution or
12 a cancer research institute gets money to conduct
13 research.

14 A. Right.

15 Q. And the writing up of grants, just give us a

16 thumbnail sketch of how that works, how a scientist who
17 has an idea in mind and would like to get funding,
18 money, goes about doing it.

19 A. Well, it's not easy to get the grants, but
20 it's like in business, it's like writing a business
21 proposal to somebody to do some work. You have to put
22 down what you're going to do and you have to compete to
23 win the award.

24 The National Cancer Institute and other
25 groups like the Robert Wood Johnson Foundation have

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

35

1 money that they will give to investigators, but there
2 is a competition for the money. And you have to be
3 very qualified. In fact, it helps to have a little bit
4 of a track record of research that you do, to build on
5 the work that's sort of done in the field. You just
6 don't want to repeat stuff that's been done; you want
7 to sort of break new ground.

8 I've been very successful in getting grants
9 over my career. The people at Roswell Park, quite
10 frankly, if you're going to be a scientist at Roswell
11 Park, you have to be successful in bringing in grants.
12 That's one of the criteria for being there. We are a
13 very successful institution. Half our employees at
14 Roswell Park Institute are there because of the money
15 that we generate through research grants.

16 But it's a very time-consuming process. To
17 put together a project, a grant application may take
18 three or four months of really focused work and writing
19 a review of the literature, and then you don't
20 always -- are not always successful the first time.
21 You get comments back and sometimes you have to go
22 through the process all over again.

23 Q. For example, as I look at the grant section,
24 you received what seems like a great deal of money,
25 \$330,000, to investigate defective cigarette filter

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

36

1 policy implications.

2 First of all, who did you get that money
3 from?

4 A. From the National Institutes of Health.
5 Actually, the National Cancer Institute. And this was
6 a project looking at -- actually, building on an
7 observation that a colleague of mine at Roswell Park,
8 Dr. John Pauly, had made, that filters --

9 MR. NEWSOM: Your Honor, objection. May we
10 approach, please?

11 THE COURT: Okay.

12 (Proceedings were had at sidebar.)

13 BY MR. ROSENBLATT:

14 Q. Dr. Cummings, you were talking about your
15 research on the cigarette filters?

16 A. Right. I'm an investigator on an NIH grant
17 that is investigating a defect in cigarette filters.
18 And this was research that I did in collaboration with
19 Dr. John Pauly, who is a molecular immunologist at
20 Roswell Park, who some six years ago came to me with
21 some slides that he had. Now he does work looking at
22 lung tissue.

23 He was actually doing research on looking at
24 chemotherapy, agents that they could deliver to lung
25 tissue for treatment, and he made an observation that
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

37

1 he wanted to check out with me. He said: Did you ever
2 hear of anybody inhaling a cigarette filter fiber?

3 THE COURT: I don't want to get into anything
4 he was talking about. Just get into your research and
5 what you found.

6 A. (Continuing) I said: I never heard of that,
7 but I would review the literature.

8 I reviewed the literature and could not find
9 anything within the literature about cigarette filter
10 fibers being inhaled.

11 We pursued this and developed some research
12 related to the fact that cigarette filters, in fact,
13 are defective. The fibers literally dangle off the end
14 of a cigarette. In fact, I brought some slides along
15 today --

16 THE COURT: We'll get into that later.

17 A. -- that could show, if you look under a
18 high-powered microscope at a regular cigarette filter,
19 a cigarette filter is made out of cellulose acetate
20 which is basically a type of plastic. In fact, it's
21 very much like film.

22 We began looking at the patents for cigarette
23 filters that existed back in the '50s, when they
24 started the creation of cigarette filters. In fact,
25 one of the earlier patents was by Kodak, because they

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

38

1 make film. Eastman Tennessee has been a long-time
2 producer of cigarette filters.

3 Film is translucent, by the way, clear; you
4 can see through film. Cigarette filters, the cigarette
5 filters on a pack of cigarettes, are white. They are
6 painted with titanium dioxide, sort of like white shoe
7 polish. It's a pigment with a milky white appearance.

8 But the original patent actually from Kodak
9 talked about the fact that you would never want to
10 block all the tar in a cigarette -- that was one of the
11 reasons that they created the filter, was to try to
12 filter out some of the tar -- because the tar is
13 largely a taste component in a cigarette. That's why
14 you get a lot of the taste from a cigarette.

15 So the fibers that are bundled together in a
16 cigarette filter are literally microscopic to the eye.
17 There are about 18,000 individual fibers bundled
18 together, and they're not tight together. And, in
19 fact, throughout the cutting, the way they make
20 cigarettes on a high-speed cigarette-making machine,
21 they cut the filter, and it creates a -- it cuts the
22 filter and creates fragments.

23 And the fragments, in fact, are loose and the
24 fibers themselves are loose. So we undertook these
25 experiments to see whether they come off; whether this

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

39

1 thing that we observed in the lung of a smoker was, in

2 fact, a cigarette filter fiber.
3 And you can do very simple tests: Tongue
4 test, if you touch a cigarette filter to your tongue
5 and put a piece of scotch tape to your tongue and take
6 the tape off and put it down on a microscope slide, you
7 will find that the fibers have come off that easily.

8 Then we undertook a study, and Dr. Pauly has
9 done these studies on autopsies of patients, where we
10 harvested the filter fibers out of the lungs of
11 cigarette smokers. And we only find them in smokers of
12 filtered cigarettes, not in nonfiltered cigarettes, not
13 in nonsmokers.

14 We've done sophisticated, basically forensic
15 pathology techniques to demonstrate these, in fact, are
16 cigarette filter fibers and not other kinds of fibers
17 like from your clothes or in the air or whatever. And
18 we published a number of studies on this topic.

19 We wrote a grant to the National Cancer
20 Institute to document this, and we've been working on
21 this grant for the last two and a half years.

22 And have looked at other defects: charcoal in
23 a Lark cigarette, which there is a little charcoal
24 cavity, and the charcoal in fact migrates. We've
25 demonstrated that the charcoal granules in a Lark

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

40

1 cigarette actually come off.

2 We've done studies to look at what smokers,
3 when they inhale the cigarettes, how many of the fibers
4 come off. This is not an easy thing to do, but we've
5 been able to do and demonstrate that the fibers come
6 off easily.

7 Q. You're talking about your own research?

8 A. Yes, of course. And then I've gone ahead and
9 done some research to find out whether smokers are
10 aware of this, and most smokers are not aware of the
11 effect.

12 MR. KIRBY: Objection, Your Honor.
13 Preemption.

14 THE COURT: Not yet. Overruled.

15 A. (Continuing) Most smokers are not aware of
16 this problem.

17 We did a study with people at the Department
18 of Motor Vehicles. We went up, and there was an easy
19 place to do interviewing with people, and identified
20 smokers and ex-smokers and asked them whether they had
21 ever heard of the fact that cigarette fibers come off
22 the end of a cigarette.

23 MR. KIRBY: Objection. Preemption and
24 hearsay.

25 THE COURT: Well, I want to get further.

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

41

1 Overrule just now.

2 MR. ROSENBLATT: All right. Let me go to
3 another subject.

4 THE WITNESS: Sure.

5 BY MR. ROSENBLATT:

6 Q. Have you ever received any grant on the
7 subject of youth marketing?

8 A. Yes, I have.

9 Q. Tell us about that.
10 A. I have a grant currently from the National
11 Cancer Institute looking at marketing to youth,
12 evidence from corporate documents. And because of the
13 wide availability of documents from the litigation
14 that's been going on against the industry, we've
15 collected a number of these documents and are doing a
16 systematic analysis to look at what they say with
17 regard to the marketing to youth, and also to
18 minorities. We've just gotten a supplement to that
19 grant to extend that to look at minorities.
20 I have a whole library of documents. I'm
21 talking now tens of thousands of documents that we've
22 collected. I have seven librarians working full-time
23 to index and abstract these documents, and we're going
24 to be in the process of writing up a number of articles
25 based on what we've learned.

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

42

1 Q. What have you learned?
2 MR. NEWSOM: Objection, Your Honor.
3 MR. KIRBY: Objection, Your Honor.
4 MR. HEIM: Objection.
5 THE COURT: Come over here.
6 (Proceedings were had at sidebar.)
7 BY MR. ROSENBLATT:
8 Q. I think I had just asked you what were your
9 findings, in terms of your research on youth marketing
10 after having reviewed thousands of tobacco company
11 documents.
12 A. The findings are consistent with what my
13 other research had suggested that I've done and
14 published papers on, which is the tobacco companies
15 have long had an interest in marketing to youth. It's
16 expressed in their documents; that their claims that
17 they are not interested in marketing to youth is a
18 blatant lie.
19 MR. KIRBY: Objection, Your Honor.
20 MR. HEIM: Move to strike the testimony.
21 THE COURT: Sustained as to the word. The
22 jury will disregard.
23 MR. ROSENBLATT: Okay. Let me --
24 BY MR. ROSENBLATT:
25 Q. In terms of the public position that the

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

43

1 tobacco industry has taken over the years, that they
2 spend millions upon millions of dollars to in effect
3 attract switchers --
4 MR. KIRBY: Objection, leading.
5 THE COURT: Hasn't gotten there yet.
6 MR. KIRBY: Counsel is testifying.
7 MR. ROSENBLATT: And counsel is interrupted
8 for a change.
9 THE COURT: Overruled.
10 Just continue with the question and I'll let
11 you know if it's leading.
12 BY MR. ROSENBLATT:
13 Q. In terms of the tobacco industry's public
14 position over the years that they do not market to
15 youth, and that they spend millions of dollars in

16 advertising every year simply to get switchers to
17 convince the Marlboro switcher to switch to Camel, to
18 convince the Camel switcher to switch to Marlboro, has
19 your -- what has your research shown with respect to
20 the veracity of that claim by the tobacco industry?

21 MR. KIRBY: Objection.

22 MR. SCHNEIDER: Objection.

23 THE COURT: Overruled.

24 A. My research has shown that that claim is
25 false. And in fact, my research, as I already

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

44

1 indicated when we looked at brand switching, in our
2 study from the COMMIT trial, the amount of brand
3 switching that we found was very low, less than 10
4 percent.

5 In fact, if you base that on company
6 switching -- because a company really doesn't get much
7 benefit when somebody switches from one of their brands
8 to another one of their own company's brands, and there
9 the percentage of switching is even lower.

10 And in fact, this is articulated in the
11 documents from the industry themselves. They recognize
12 that consumers are very brand loyal, and they also
13 recognize the biggest threat to loss of customers --
14 which is what we saw, again, in our COMMIT study -- was
15 people quitting smoking.

16 And, in fact, that they do a lot to try to
17 keep people smoking, because people do quit. And we do
18 see people quitting smoking every year in this country.
19 They have to replace them. And they talk blatantly
20 about replacing them with new recruits, new smokers.

21 And some of the documents, a Lorillard
22 document in 1978 --

23 MR. NEWSOM: Objection, Your Honor.

24 MR. ROSS: Objection, Your Honor. He's
25 testifying to the contents of documents that are not in

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

45

1 evidence, haven't been disclosed, haven't even been
2 identified.

3 THE COURT: Sustain the objection.

4 THE WITNESS: Okay.

5 BY MR. ROSENBLATT:

6 Q. Without making reference to a particular
7 document.

8 A. Well, many of the documents that I've read,
9 from all the companies, talk about a very direct
10 interest in recruiting --

11 MR. KIRBY: Objection, Your Honor. It's the
12 same thing.

13 MR. HEIM: Objection, Your Honor. Making
14 reference to all the companies.

15 MR. ROSENBLATT: No, it's not.

16 MR. KIRBY: He's testifying as to the
17 contents of documents not in evidence --

18 MR. ROSENBLATT: Are we making speeches now?

19 THE COURT: Yes, we are.

20 MR. KIRBY: -- not disclosed to us.

21 THE COURT: Overrule the objection. He is
22 talking in general terms, without making reference to

23 any specific -- go ahead.
24 A. (Continuing) Documents that I have seen show
25 a direct interest in marketing to youth because they
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

46

1 have to replace the smokers who quit and die every
2 year, and, in fact, talk about the fact that the
3 success of their companies and brands will depend on
4 their ability to recruit new smokers.
5 And, in fact, this is evident when you look
6 at the market shares of different companies and how
7 companies have grown or gotten smaller over the years.
8 Their ability to recruit new smokers to their brands
9 has been indicative of their success.
10 Q. Dr. Cummings, have you made a study of the
11 brands that are most popular with young people?
12 A. Yes.
13 Q. Young people being defined as under the age
14 of 18.
15 A. Yes. Our study in COMMIT, ninth graders,
16 these are 14 and 15-year-olds, and I think we were one
17 of the first to publish this observation here in the
18 United States.
19 Of the 300 or some odd brands available in
20 the market, we found teenagers in our COMMIT study
21 smoked three brands: Marlboro overwhelmingly, Camel
22 and Newport.
23 And there was quite a lot of variation.
24 Actually, on the east coast, Newport was a lot more
25 popular. Newport was almost the exclusive brand that

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

47

1 we see being smoked by teenage -- African-American
2 teenagers.
3 In particular, it's a very popular brand in
4 urban eastern coast states, and not as popular out west
5 for some reason. This has been repeated by a number of
6 other investigators, including myself. We've also done
7 some follow-up studies to this.
8 In fact, in our study in COMMIT, 1988, we did
9 a survey of brand use among the adults; and in 1990, we
10 did a study of the teenagers in those same communities
11 to see if it was a spillover, whether there were a lot
12 of Marlboro smokers in one community and therefore the
13 kids were smoking Marlboro, and looked at that
14 switching over time. When we went back a few years
15 later to resurvey both the kids and the adults, we
16 found there was this shift to generic cigarettes among
17 the adults.
18 Q. Generic being the discount?
19 A. Yes. These are cigarettes that have no label
20 on them or what they call discount brands. There are a
21 variety of discount brands that are sold. There was a
22 fair amount of those brands, and huge growth. In fact,
23 that went from about 6 percent of brand use among the
24 adults in 1988 to over 30 percent in 1994. It was a
25 huge change.

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

48

1 Among the kids, however, there was very

2 little switching to generics. In fact, they stayed
3 with Marlboro, Camel and Newport. Between 1990 and
4 1992, in those communities, the brand that grew the
5 most was Newport. And that was very much tied to a
6 trend that we had seen earlier, which was a decline in
7 smoking among African-American youths that was
8 occurring in the -- during the decade of the 1980s, and
9 an increase, particularly sharp increase in
10 African-American teens smoking. And Newport is their
11 brand of choice.

12 Q. Which brands of cigarettes are advertised
13 most heavily in this country?

14 A. Well, it so happens that Marlboro is the most
15 heavily-advertised brand, and Camel and Newport are
16 among the most heavily advertised brands as well.

17 Q. Do you think -- is that a coincidence, in
18 your opinion, or is there a relationship between the
19 heavy advertising and the fact that those are the three
20 most popular brands among youth?

21 A. I've stated previously in my writings that I
22 don't think it's a coincidence. In fact, it's
23 indicated in the documents that I've read that the
24 tobacco industry, in fact, argues about spending --

25 MR. KIRBY: Objection, Your Honor.

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

49

1 MR. ROSS: Objection.

2 A. -- spending more money to get that.

3 Q. Now, Dr. Cummings, you have a Ph.D.?

4 THE COURT: Wait a minute. Overrule the
5 objection, just for the record. Go ahead.

6 BY MR. ROSENBLATT:

7 Q. Now, you have a Ph.D. in health behavior.
8 You've studied -- have you studied adolescent behavior
9 and youth behavior as it relates to this whole issue of
10 smoking and health?

11 A. Yes, I have.

12 Q. Do most youngsters -- you know, it seems that
13 most kids are very well-informed today and should know
14 that cigarettes are potentially dangerous.

15 A. Yes.

16 Q. Most of them know that?

17 A. I would agree with that.

18 Q. Okay. Now, what would -- what would, in your
19 opinion, be the impact if a well-qualified medical
20 doctor addressed a high school full of students, told
21 them about the dangers of smoking, it can cause all
22 these diseases, and recommended to them in the
23 strongest terms possible that it is in their interest
24 never to take up smoking, and if they are smoking now,
25 to quit smoking, what impact would that have on the

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

50

1 kids, listening to such an M.D.?

2 MR. NEWSOM: Objection. Speculation, Your
3 Honor.

4 THE COURT: Sustained.

5 A. Well, my experience is --

6 THE COURT: No. I sustained the objection.
7 It's speculative as to what would have occurred.

8 BY MR. ROSENBLATT:

9 Q. What, in your opinion, would be the practical
10 impact of such a talk on those students?
11 MR. NEWSOM: Same objection, Your Honor.
12 THE COURT: Same ruling.
13 BY MR. ROSENBLATT:
14 Q. Have you, in fact, done research on that type
15 of thing, as to what influences --
16 A. I've had the experience of being that person,
17 giving those talks, and my experience is it has very
18 little impact.
19 MR. NEWSOM: Your Honor, he is not a
20 well-qualified medical doctor.
21 THE COURT: Well, that's true. I will
22 sustain that.
23 BY MR. ROSENBLATT:
24 Q. What is the reason that well-informed kids,
25 based on your research, your experience, your 18 years
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

51

1 at the Roswell Park Cancer Institute, continue to smoke
2 in spite of all the warnings, all they see, and their
3 knowledge that smoking is bad for them?
4 A. Well --
5 MR. NEWSOM: Objection.
6 MR. KIRBY: Objection, Your Honor.
7 THE COURT: Based on his research.
8 Overruled.
9 A. Well, this was discussed at length in the
10 Institute of Medicine report that we prepared on
11 teenage smoking, because I think this is the crux of
12 the issue. With all the information that kids have
13 available today, you know, why do we see kids, any
14 kids, smoking?
15 And the argument that we made in that report,
16 which I happen to believe, is that quite -- kids
17 basically don't believe that they're going to get
18 addicted. They think they can do this for a very short
19 period of time and will quit.
20 In fact, surveys that have been done, that we
21 cited in the Institute of Medicine report where we
22 asked kids about their smoking behavior, they said: Do
23 you think you'll be smoking --
24 MR. NEWSOM: Hearsay, Your Honor.
25 A. (Continung) It's not --
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

52

1 THE COURT: Overruled.
2 A. (Continuing) Do you think you'll be smoking
3 five years from now? Of the smokers, if you took 100
4 high school smokers, what you find is 85 percent of
5 those kids state that they think that they'll be not
6 smoking five years down the line.
7 And they've gone back and asked those kids
8 whether they're smoking, a panel study that was done by
9 the University of Michigan, and only 25 out of 100 have
10 quit smoking. 75 out of 100 are still smoking.
11 The vast majority of teenagers today, in my
12 opinion, understand the health risks of smoking.
13 They're doing it because it's the thing to do; they're
14 out at the party, they're doing it for the moment;
15 they're not thinking about the long-term consequences

16 or the potential of quitting.
17 They believe they can quit anytime they want,
18 and unfortunately, many of those teens learn -- because
19 in the same survey that the University of Michigan had
20 done, over 50 percent of those teenagers had tried to
21 quit.

22 MR. NEWSOM: Your Honor, that's somebody
23 else's survey now.

24 THE COURT: Sustained.

25 BY MR. ROSENBLATT:

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

53

1 Q. Just talk about yours.

2 A. I was quoting out of the University of
3 Michigan --

4 THE COURT: I will sustain it anyway. Not
5 your work; somebody else's work.

6 THE WITNESS: Well, I was an author on the
7 report. But I don't want to argue about it.

8 My experience is that many kids think they
9 can quit, and they find soon after they get into
10 smoking for a while, a few years, that they struggle
11 mightily to get off of cigarettes. And not everybody
12 does.

13 And there's some unanswered questions as to
14 which kids are ending up smokers and which ones don't.
15 Perhaps genetic predisposition is one of the things
16 they're looking at.

17 I've done research and I'm involved in some
18 research looking at genes, looking for nicotine
19 addiction.

20 BY MR. ROSENBLATT:

21 Q. Now, Dr. Cummings, looking at an article in
22 your curriculum vitae: Debunking Myths About
23 Self-Quitting: Evidence from Ten Perspective Studies
24 of Persons Quitting Smoking by Themselves, which was
25 published in the American Psychologist, what was the

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

54

1 thrust of that article?

2 A. Well, this was looking at the idea of people
3 just quitting on their own and not having any
4 difficulty in stopping smoking, it's easy to quit
5 smoking, you can quit anytime you want, and this shows
6 that most smokers are struggling mightily to quit.

7 These were the compilation of data that were
8 collected from six or seven studies that were done
9 around the country. We were one of the participants,
10 which is why I was an author on that particular paper.
11 It was looking at the self-quitting process.

12 And many smokers try and fail and try again
13 and try again and try again before they are ultimately
14 successful in quitting. And some people may never
15 ultimately be successful, as unfortunately we see every
16 day at Roswell Park Cancer Institute with our patients.

17 Q. In terms of your own hands-on experience with
18 five or six thousand smokers who are trying to quit
19 smoking over the years, what conclusions have you
20 reached on the subject of quitting?

21 A. Well, my experience, and again the study that
22 we did with COMMIT where we followed 13,000 smokers,

23 the best predictor of quitting was how much you smoked
24 and how addicted you were.

25 The measure of addiction is smoking first
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

55

1 thing in the morning, you have -- you've gone all night
2 without having a cigarette, your nicotine levels are
3 depleted, and smoking first thing in the morning. A
4 measure that you use is typically: Do you smoke within
5 30 minutes of getting up in the morning?

6 And the people that answered yes to that
7 question were much less likely to quit. The people who
8 smoked more cigarettes were much more likely to quit
9 smoking over that five-year period despite the fact
10 that the vast majority -- and when you control out who
11 said: I really want to quit smoking, I'm going to try
12 to quit smoking, the ones who were the heavier smokers
13 were the least successful.

14 So without nicotine in the product, I don't
15 think you would see people smoking.

16 Q. Now, Dr. Cummings, I want to ask you about an
17 article you did, the title of which is: What
18 Scientists Funded by the Tobacco Industry Believe About
19 the Hazards of Cigarette Smoking.

20 A. This was a survey that we did in 1989.

21 MR. MOODHE: Objection, Your Honor.

22 MR. HEIM: I'll object on hearsay grounds to
23 this.

24 THE COURT: All right. We have to talk about
25 this one, I guess.

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

56

1 (Proceedings were had at sidebar.)

2 Q. Okay. Dr. Cummings, the title of your
3 article which appeared in the American Journal of
4 Public Health is: What Scientists Funded by the
5 Tobacco Industry Believe About the Hazards of Cigarette
6 Smoking.

7 Now, based on your research, based on your
8 polling, based on your survey, what were your findings
9 on that question, as to what scientists funded by the
10 tobacco industry believe about the hazards of cigarette
11 smoking?

12 A. What we found was that the scientists -- and
13 these were scientists who had received money from the
14 Council for Tobacco Research -- that we had surveyed,
15 overwhelmingly believed that smoking was a cause of
16 premature mortality, lung cancer, heart disease and
17 emphysema.

18 In fact, when we asked the question, was
19 there sufficient evidence for drawing a causal
20 conclusion to that question, we just asked them to
21 check off strongly agree, agree, disagree, strongly
22 disagree. They were all in the "strongly agree" or
23 "agree" mode, over 90 percent.

24 In fact, they also believed that smoking was
25 an addiction. Because we asked them the question on

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

57

1 addiction as well.

2 Q. How did you get the names of the particular
3 scientists and experts you were going to survey? And
4 how did you know that they had, in fact, received money
5 from the Council for Tobacco Research to fund their own
6 research?

7 A. We basically went to the annual report from
8 the Council for Tobacco Research and identified the
9 names of grant recipients that were listed for the '89
10 report. And we surveyed only the scientists in the
11 United States, which was 99 percent of the group, and
12 sent them a survey.

13 We got back not quite half of the surveys
14 from the respondents, and we wrote up the results. We
15 did a little comparison to see whether there was any
16 bias that might exist between the respondents and
17 nonrespondents.

18 And then we wrote up an article and sent it
19 into the American Journal of Public Health, because
20 what stimulated this research idea was I work at a
21 cancer hospital. I mean, there is no controversy about
22 smoking as a cause of cancer among the scientists at
23 Roswell Park, including some scientists who have taken
24 money from the Council for Tobacco Research. They
25 believe that smoking causes cancer.

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

58

1 MR. NEWSOM: Objection. Hearsay, Your Honor.
2 THE COURT: This is based upon the results of
3 that survey.

4 MR. NEWSOM: No. He's talking about people
5 at Roswell Park.

6 MR. ROSENBLATT: His own institution.

7 THE COURT: Well, that's a difference.

8 THE WITNESS: To try to give a little
9 background --

10 THE COURT: No. You can't give a little of
11 this and a little of that.

12 I will sustain the objection.

13 The jury will disregard the results of
14 anything related to Roswell Park at this point. And
15 only as a result of the survey you are talking about.

16 THE WITNESS: As a result of the survey,
17 there was no controversy, even among the scientists
18 funded by the Council for Tobacco Research.

19 Most of their abstracts, by the way, had
20 nothing to do with smoking and cancer.

21 BY MR. ROSENBLATT:

22 Q. What was the focus -- what has been the focus
23 of most of the research funded by the Council for
24 Tobacco Research over the years?

25 MS. LUTHER: Objection. Foundation.

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

59

1 MR. HEIM: Objection, Your Honor.

2 THE COURT: Foundation. Sustained for
3 foundation.

4 BY MR. ROSENBLATT:

5 Q. Have you made a study of the types of
6 projects funded by the Council for Tobacco Research
7 over the years as part of your general research
8 efforts, as part of your general presentations that you

9 make in connection with your work?
10 MR. NEWSOM: Your Honor, this study was
11 limited to one year.
12 THE COURT: I don't know, talking about this
13 study? This is a general foundation.
14 MR. ROSENBLATT: Correct.
15 A. It's part of the study that we did, the
16 papers we wrote. We looked at the mission statement to
17 the Council for Tobacco Research, and the mission
18 statement was to study the alleged relationships -- to
19 get the facts on the alleged relationship between
20 smoking and the various diseases that had been touted
21 to be linked to smoking.
22 And so we've looked at the titles of
23 abstracts, going back to the early reports from the
24 Council for Tobacco Research. We did a simple word
25 search to see whether the words "smoking," "nicotine,"
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

60

1 "cigarettes," "tobacco," showed up in any of the
2 titles, because you would have smoking and whatever
3 disease: cancer, emphysema, heart disease.
4 Less than 6 percent of the titles that we
5 found, dating back to 1957, have had the word
6 "cigarette," "tobacco," "smoking" in the title of the
7 abstracts. These abstracts largely deal with
8 biomedical questions, that in my opinion have very
9 little to do with smoking and health.
10 MR. HEIM: Objection, Your Honor.
11 THE COURT: Overruled.
12 MR. HEIM: He's now testifying as to the
13 titles of what the articles said.
14 THE COURT: Overruled.
15 MR. ROSENBLATT: I will move on to another
16 subject, Judge.
17 THE COURT: Time for a break?
18 MR. ROSENBLATT: Yes.
19 THE COURT: Let's take a break, folks. We
20 have some work that we have to do, too, so we will take
21 about 15 minutes.
22 (The jurors exited the courtroom.)
23 THE COURT: We'll take five minutes or so.
24 During the break, you must not discuss your
25 testimony or anything about this case with anybody,
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

61

1 including the lawyers.
2 THE WITNESS: Okay.
3 (A brief recess was taken.)
4 THE COURT: Okay. Now, I think, Doctor, you
5 will have to step out for a few minutes.
6 MR. ROSENBLATT: If we're going to go over
7 the slides, he's probably the best person that can
8 explain.
9 THE COURT: I will find out what the
10 objections are.
11 MR. ROSENBLATT: I'll come get you when we
12 start showing slides, or maybe we want to see the
13 slides before they object.
14 THE COURT: I don't know.
15 MR. ROSENBLATT: Would it make sense for

16 Dr. Cummings to kind of go through them?
17 THE COURT: How many slides do you have to
18 begin with? Is what we're talking about 25, 30,
19 thereabouts?
20 MR. ROSENBLATT: 30.
21 THE COURT: Okay.
22 MR. ROSENBLATT: And he told me, Judge, that
23 he had them divided into categories.
24 THE COURT: I guess I'll have to come down
25 here to take a look. Is there any way you can just --
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

62

1 MR. HEIM: Judge, I don't know whether this
2 is a help or not. This is a description of the slides
3 that someone put together, just a description of what
4 they were.
5 THE COURT: I guess we'll just have to take a
6 look and go through this.
7 MR. ROSENBLATT: Let me get him in, Judge.
8 MR. HEIM: Judge --
9 THE COURT: We'll see. There are a lot there
10 that I look at and I have questions. I'll see what he
11 wants to do, without the jury.
12 MR. HEIM: Mr. Newsom knows more about these
13 slides than I do. He's here.
14 THE COURT: Let's see which ones we are
15 talking about.
16 MR. HEIM: We didn't see the slides, so we
17 will do it as we go along.
18 THE COURT: I'll step down over here so I can
19 see the projection. What we're going to do, if you
20 would, is run through them rather quickly so I get an
21 idea of what they are and briefly why you're showing
22 that particular slide.
23 From the description I just looked at on some
24 of these slides, I question what they are. So I want
25 to see what they look like.
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

63

1 Is this part of a lecture you have given?
2 THE WITNESS: Parts of it, and parts of it
3 are some of my research that I've done, and some of it
4 is in the context of some of the work that's been done
5 at Roswell Park in terms of the smoking and health.
6 So it shows the background of some of the
7 work that I inherited when I came to Roswell Park. But
8 this first part here is --
9 THE COURT: I don't have any problem with
10 that, I don't think.
11 THE WITNESS: -- focused on our work on the
12 design of cigarette; shows what a tobacco leaf looks
13 like.
14 And when we talk about tobacco, the fact that
15 most people have no idea that cigarettes include, in
16 fact, paper material --
17 THE COURT: Wait a minute. Before you start
18 getting to that, anytime you want to object or --
19 MR. NEWSOM: We object to that one.
20 Characterizing in a very misleading way by being
21 "soaked in pesticides, saturating with secret coloring,
22 bug-infested drying barns," nothing he has expertise

23 in.
24 MR. ROSS: Also, it's totally beyond his
25 expert disclosure. Nothing disclosed that he's going
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

64

1 to testify about how cigarettes are made or materials
2 or anything else in his disclosure.
3 MR. ROSENBLATT: That's not true, Judge. On
4 Dr. Cummings' deposition he greatly expanded the
5 disclosure.
6 MR. ROSS: You can't do that, Judge. Here is
7 his disclosure. (Handing)
8 MR. NEWSOM: In fact, there was a second
9 disclosure that's even more limited. There was a
10 supplemental disclosure, which was actually more
11 limited.
12 THE COURT: Okay.
13 THE WITNESS: I can explain the context of
14 this. This relates to nicotine delivery in the product
15 and nicotine addiction.
16 THE COURT: Yes, but there are other things
17 in there. "Soaked in pesticides" right off the bat
18 would be a problem.
19 THE WITNESS: I can demonstrate without the
20 slide, if you like, the reconstituted, for example, in
21 Marlboro cigarettes. We can do a float test --
22 THE COURT: We might do that. This
23 particular one we can eliminate. You have to eliminate
24 it. Okay.
25 MR. NEWSOM: That's his characterization of
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

65

1 being a "secret fire-retarding chemical."
2 THE WITNESS: Most people are not aware of
3 the chemicals put on the paper to control the burn
4 rate.
5 MR. NEWSOM: It's an effort to make it read
6 in a prejudicial way.
7 THE COURT: I know. It's the use of the
8 terms they're getting all annoyed about.
9 If you had said "treated with fire-retardant
10 chemicals," that would be one thing. But a "secret
11 fire-retardant chemical," naturally you're going to get
12 an objection.
13 MR. NEWSOM: There is no issue in this case
14 as to whether the chemicals are secret or not, or
15 anything about the paper.
16 THE WITNESS: Also related to nicotine
17 delivery, because the temporary --
18 THE COURT: It's the "secret" part of it. So
19 eliminate that one.
20 THE WITNESS: This relates to our work on
21 cigarette filters.
22 THE COURT: Okay. That's fine.
23 I know you object to it.
24 MR. NEWSOM: It's about doing nothing to
25 reduce the danger.

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

66

1 THE COURT: That's what everybody says.

2 Okay. That's his testimony. That's from his research.
3 Fine.
4 THE WITNESS: This is a picture of the
5 cigarette butt.
6 THE COURT: Fine.
7 THE WITNESS: This is a cigarette filter
8 fiber harvested out of the lung of a smoker.
9 THE COURT: That's fine.
10 THE WITNESS: This is just a list of the
11 chemicals, just a partial list.
12 MR. NEWSOM: Characterizing as poisons.
13 THE COURT: We've had testimony about that.
14 Okay. That's all right.
15 THE WITNESS: This is a smoking machine at
16 Roswell Park Institute.
17 THE COURT: Okay.
18 THE WITNESS: This is the amount of tar that
19 a smoker would consume in the equivalent of a pack a
20 day for one year.
21 MR. NEWSOM: Your Honor, that's nothing like
22 what the smoker would actually absorb. It's in a
23 flask.
24 THE COURT: You can cross-examine him about
25 it.

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

67

1 THE WITNESS: This is from our mouse painting
2 experiments done at Roswell Park in the '60s.
3 MR. NEWSOM: He didn't do any of the mouse
4 painting experiments.
5 THE WITNESS: I inherited this material.
6 THE COURT: This is what it was. This is
7 what a mouse painting looks like. He's not going to
8 get into going into results that he didn't do. But if
9 this is what they did --
10 MR. NEWSOM: If that's understood, that he's
11 not going to get into the results of studies he didn't
12 do --
13 THE COURT: All right.
14 MR. SCHNEIDER: There is no foundation or
15 authentication for the last slide. This witness is not
16 a toxicologist, doesn't have a degree in that field.
17 He should not be allowed to put up a slide and explain
18 it.
19 MR. HEIM: What did you do, Judge?
20 THE COURT: I left it in. What's wrong with
21 that?
22 MR. HEIM: I didn't have a chance to look at
23 it.
24 THE WITNESS: These are pictures of cilia in
25 the airway of a nonsmoker. These are healthy cilia.

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

68

1 This is the contrast of the cilia in a cigarette smoker
2 which shows they are paralyzed.
3 MR. NEWSOM: Your Honor, he has no expertise
4 to testify about this if he didn't make the slides.
5 THE COURT: This is part of your study and
6 review.
7 THE WITNESS: This is part of what I do. I
8 explain this to thousands of people.

9 MR. NEWSOM: He didn't take the slides.
10 THE COURT: Doesn't have to take the slides
11 to be able to explain it.
12 What's wrong with you people?
13 THE WITNESS: This is showing a lung on the
14 left half of a nonsmoker, and a smoker on the right.
15 The whitish part is the cancer on the lung.
16 This is a new series. This is on some of our
17 advertising work. This is an ad from Parent Magazine.
18 We don't advertise to children. This is from
19 RJ Reynolds.
20 THE COURT: Wait, wait.
21 MS. LUTHER: Judge, could we go back two
22 slides? The slide before had subtext that I couldn't
23 read at the bottom.
24 THE COURT: The one before that?
25 MS. LUTHER: Yes, the one right before. It's
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

69

1 all the way -- it's at the bottom.
2 THE COURT: Who can read that? Anybody know
3 what it says?
4 MS. LUTHER: "According to the American Lung
5 Association, if you smoke, your chances of dying of
6 lung cancer are 700 times those of nonsmokers. If you
7 smoke, this could be your lung. Think about it. The
8 next time you light a cigarette, if there is a next
9 time" --
10 THE COURT: You have to understand, he's in a
11 teaching mode. He's in a mode to talk to people about
12 the dangers of smoking.
13 This is what he does for a living. This is
14 what he does in his presentation. If that's what he
15 does, that's what he does. I mean --
16 THE WITNESS: That's what I do.
17 MR. ROSS: Your Honor, I thought we already
18 had a ruling that this witness wasn't going to be
19 testifying about causation.
20 THE COURT: He's not.
21 MR. NEWSOM: That's what the slide points to.
22 MR. ROSS: All these slides are: This is
23 what smoking does to your lung. That is causation.
24 THE COURT: Not on a scientific level. It's
25 just a teaching aid, basically is what it is.
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

70

1 MR. ROSS: Then why are we telling this to
2 the jury if it's not testimony about causation?
3 THE COURT: Go ahead.
4 MS. LUTHER: With regard to that --
5 THE COURT: I don't know about these last
6 two.
7 MR. NEWSOM: Wait, wait.
8 MS. LUTHER: It has RJR at the bottom.
9 MR. NEWSOM: It's a Reynolds --
10 MR. HEIM: Can we put it down so we can read
11 it?
12 THE COURT: Nobody can read that.
13 MR. KIRBY: There is no foundation or
14 authentication for it. It would be improper to show it
15 to the jury.

16 THE COURT: Where did this come from?
17 THE WITNESS: Parent Magazine.
18 THE COURT: Do you have a copy of it other
19 than the slide?
20 THE WITNESS: I don't have the hard copy of
21 it with me.
22 THE COURT: Okay. How do we know it came
23 from Parent Magazine?
24 THE WITNESS: Because I took this out of
25 Parent Magazine and made a slide out of it.
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

71

1 THE COURT: You personally did?
2 THE WITNESS: Yeah.
3 THE COURT: Move to the next.
4 MR. KIRBY: Your Honor, we have an objection
5 to the last slide.
6 MR. HEIM: He hasn't ruled on it.
7 THE COURT: I didn't know if they were the
8 same, if that is part of it.
9 This is something different now?
10 THE WITNESS: Yes.
11 THE COURT: Let's go back to the other one.
12 What is your objection to that?
13 MR. KIRBY: Foundation, hearsay. The
14 document is not in evidence. It's improper to show the
15 substance of it.
16 THE COURT: How are you going to get it into
17 evidence until we start talking about it?
18 MS. LUTHER: It's not prepared by any of the
19 tobacco companies, Judge.
20 THE COURT: It says on the bottom, RJR.
21 MS. LUTHER: Read the article. It says: Who
22 are you kidding? The newspapers and magazines and
23 billboards are filled with cigarette ads. Kids can't
24 help but see them. How can you expect us to believe
25 you're not trying to reach --
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

72

1 MR. KIRBY: Your Honor, the point is there
2 must be --
3 THE COURT: Who wrote it? That's the point.
4 If RJR produced it and put it in Parent Magazine for
5 the public, then what?
6 MR. ROSENBLATT: That's Reynolds' ad, Judge.
7 THE COURT: If that was produced by RJR, how
8 can you complain about it?
9 MR. KIRBY: I can complain about it because
10 there is no proper foundation for its admissibility.
11 It's also not relevant. There's no testimony about
12 why -- there's no offer as to why this is relevant.
13 THE COURT: First of all, "We don't want
14 young people to smoke." That's not relevant?
15 MR. KIRBY: What's it relevant to in a common
16 issue phase?
17 THE COURT: Youth smoking. If he's going to
18 testify that he took that out of a magazine himself,
19 clipped it out and made the slide himself, that's good
20 enough.
21 What is that?
22 THE WITNESS: These are quotes that we've

23 extracted from documents as part of my research on
24 marketing of tobacco to youth.
25 MR. NEWSOM: None of these documents are in
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

73

1 evidence.
2 MS. LUTHER: Imperial Tobacco isn't a
3 defendant.
4 THE COURT: I have a problem with that.
5 MR. NEWSOM: Imperial is a Canadian company
6 that is not a defendant.
7 THE COURT: Take that one out.
8 MR. NEWSOM: This is the same sort of thing.
9 THE WITNESS: This is Reynolds and Philip
10 Morris.
11 MR. SCHNEIDER: Same problem.
12 MR. HEIM: Same issue.
13 MR. KIRBY: Your Honor, the same problem.
14 THE COURT: Amazing, isn't it? I don't know.
15 It says: RJR Reynolds, Planning Forecast, stamped
16 secret, 15 March 1976.
17 MR. KIRBY: In fact, Your Honor may recall
18 the top quote is from a document that Your Honor has
19 previously excluded from evidence because you found
20 that it was not the Reynolds' planning forecasting
21 document.
22 THE COURT: I don't know that. You may know
23 all about that.
24 MR. KIRBY: Well, I'm representing that to
25 you, Your Honor, and I have the document if you would
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

74

1 like to see it.
2 THE COURT: Okay. What is the next one on
3 the bottom?
4 MR. HEIM: That is a statement in a document
5 by a Philip Morris demographer who is not part of the
6 marketing department, and it doesn't say anything about
7 marketing to youth.
8 THE COURT: Says Myron Johnston, Philip
9 Morris USA, interoffice correspondence of March 1981.
10 MR. HEIM: That's what I said.
11 THE COURT: It's a company document.
12 MR. HEIM: Of course it's a company document.
13 It's not in evidence. It's an extract from the
14 document. This guy was not in the marketing department
15 of Philip Morris.
16 It doesn't say we're not marketing to youth;
17 it simply says we're suffering more than the other
18 companies. Doesn't say they are marketing to youth.
19 THE COURT: The interpretation is something
20 different. The question is what it says. Your
21 interpretation may be different from somebody else's.
22 MR. HEIM: But it's also not in evidence.
23 THE COURT: No. We have a whole bunch of
24 documents that we still have not discussed.
25 MR. ROSENBLATT: Correct.
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

75

1 MR. NEWSOM: I don't believe it's on the list

2 either. It's not on the reliance list.
3 THE COURT: Pull it out for the time being
4 and -- we're doing this really backwards. We have a
5 whole bunch of documents we haven't gone through yet.
6 THE WITNESS: These are examples of some of
7 the marketing to youth that I have clipped. This is
8 from a Rolling Stone magazine, ticketron promotion with
9 Joe Camel.
10 MR. KIRBY: Foundation, relevance, and 403.
11 THE COURT: Overruled.
12 THE WITNESS: This is from Sports
13 Illustrated, Marlboro sports calendar.
14 THE COURT: Overruled.
15 THE WITNESS: This is a picture of a product
16 placement for Lucky Strike in the movie with Eddie
17 Murphy. The context is: Marketing with product
18 placements through movies.
19 MR. SCHNEIDER: Your Honor, there's no
20 foundation for that testimony. What is the foundation
21 for --
22 THE COURT: That it's there. The very fact
23 that it's there, presented to the public, is the issue.
24 MR. SCHNEIDER: I guess what I'm saying, Your
25 Honor, is what is the authentication that this is a
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

76

1 clip from the movie? Where is the evidence of that?
2 There's no foundation for that. Dr. Cummings
3 just said that's what he thinks it is.
4 THE COURT: Overruled. Go ahead.
5 THE WITNESS: This is another ad for Camel
6 showing one of the promotions that they do, giving away
7 free packs, buy one get one free.
8 MR. KIRBY: Same objection, Your Honor.
9 THE COURT: Overruled.
10 MR. KIRBY: And Your Honor has never ruled on
11 our motion in limine that was argued back in July.
12 THE COURT: Yes. I think I probably did.
13 THE WITNESS: This is marketing free
14 sampling. This is outside of Madison Square Garden in
15 New York City. A colleague of mine, Joe Turner, took
16 this particular photograph of a person from Lorillard
17 Tobacco handing out free samples of Newport
18 cigarettes --
19 THE COURT: I can't -- take that one out.
20 MR. ROSENBLATT: Remove this one, Judge?
21 THE COURT: Yes.
22 THE WITNESS: On to a different topic.
23 This is on youth smoking and sort of
24 addiction. This is a quote that just summarizes what
25 I've already stated previously in my testimony: Just
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

77

1 smoking for the fun of it, I can quit any time I want.
2 This is a quote from a 15-year-old in
3 Massachusetts as part of a focus group.
4 MR. NEWSOM: Obviously hearsay.
5 THE COURT: Whose quote.
6 THE WITNESS: A Massachusetts teen. It
7 appeared in a document from the Massachusetts
8 Department of Public Health from a survey they had done

9 in that state.
10 THE COURT: No, we don't need that. You
11 already testified about that.
12 THE WITNESS: This is from the study that I
13 mentioned before on the -- that actually is highlighted
14 in the Institute of Medicine report, the University of
15 Michigan survey on high school teenagers.
16 THE COURT: Based on your research?
17 MS. LUTHER: No, based on the University of
18 Michigan study.
19 THE WITNESS: That's cited in the Institute
20 of Medicine report.
21 THE COURT: Which is what you authored?
22 THE WITNESS: That's right.
23 THE COURT: Overruled.
24 THE WITNESS: This is a clip from the New
25 York Times with the tobacco chiefs in 1994 standing in
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

78

1 front of Congress testifying that nicotine and
2 cigarettes aren't addictive.
3 MR. HEIM: Plenty of evidence on this
4 subject. And we've argued this many times, and Your
5 Honor has not permitted this.
6 MR. ROSENBLATT: But I think saying it in
7 front of Congress and they're taking the oath --
8 MR. NEWSOM: Trying to gain some additional
9 credibility from being in the New York Times?
10 MR. MARTINEZ: The headline writer should be
11 testifying in this case.
12 MR. ROSENBLATT: It's a true declarative
13 statement. That's what they all said. That's a fact,
14 and that's why Dr. Cummings uses it in his
15 presentation.
16 THE COURT: Overruled. Overruled.
17 Go ahead.
18 THE WITNESS: This is a summary of the 1988
19 Surgeon General's Report on nicotine addiction, lists
20 the major conclusions of that report.
21 MR. HEIM: Your Honor, can we go back?
22 THE COURT: Who made that one up, this slide?
23 THE WITNESS: This particular slide, I
24 believe I got this from the Centers for Disease
25 Control.
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

79

1 THE COURT: Okay.
2 MR. HEIM: Your Honor, can we just for a
3 second --
4 THE COURT: Go back to the Times article?
5 MR. HEIM: Yes, sir.
6 MS. LUTHER: One more.
7 MR. HEIM: Your Honor, this is being put in
8 here for -- purely for juxtaposition and advocacy
9 purposes. This is a newspaper account. Your Honor has
10 been consistent in keeping newspaper photographs out.
11 THE COURT: No, that's not necessarily so.
12 MR. HEIM: What -- it is obviously a hearsay
13 statement. The picture is hearsay as well. Because
14 pictures as Your Honor knows, can be hearsay. And it
15 serves no purpose under Rule 403. If it should come in

16 anywhere, it should come in for somebody taking a
17 picture of a line-up like this the way Congress set it
18 up, it is really prejudicial to put this picture in
19 here.
20 THE COURT: Overruled.
21 THE WITNESS: This is from the same slide
22 series. Talks about criteria for drug dependence.
23 THE COURT: All right.
24 THE WITNESS: This is just a highlight of
25 some of those criteria, compulsive use of the behavior,
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

80

1 this is what he observed. Many smokers smoke every 20
2 to 30 minutes throughout the waking hours of the day.
3 THE COURT: Take that out.
4 THE WITNESS: This is just showing some of
5 the neurochemical effects of nicotine.
6 THE COURT: Okay.
7 THE WITNESS: This is showing the effects of
8 blood nicotine levels, different forms of nicotine
9 administration, cigarettes, nicotine patches, nicotine
10 gum.
11 MR. HEIM: Is this this gentleman's research?
12 MR. NEWSOM: He's not a toxicologist.
13 THE COURT: No. He's explaining as part of
14 his presentation. It comes from hearsay, as far as you
15 are concerned.
16 MR. MARTINEZ: There is a rule.
17 THE COURT: Yes, I understand the rule more
18 than people think I do.
19 THE WITNESS: This relates to the nicotine
20 addiction cycle. People use nicotine for pleasure, and
21 they eventually develop a tolerance and physical
22 dependence on the drug.
23 Withdrawal of the drug or abstinence from the
24 drug produces withdrawal symptoms, and people use
25 smoking or nicotine administration as a way of
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

81

1 alleviating those withdrawal symptoms.
2 MR. HEIM: At best this is cumulative
3 testimony. We've had several witnesses, including
4 Dr. Benowitz, testify about nicotine and nicotine's
5 pharmacological effects.
6 THE COURT: What the man is trying to do is
7 to show what nicotine does, in his presentation. If
8 this is part of what he does, this is part of what he
9 does for a living, this is part of his expertise, I
10 don't have any problem with that. Overruled.
11 Just because it hurts doesn't mean it can't
12 come in.
13 THE WITNESS: This is on our work on Eclipse.
14 This is just an ad on the Eclipse, just to show that
15 it's been introduced, now there's less secondhand
16 smoke.
17 THE COURT: What article is that?
18 THE WITNESS: This is an ad from R.J.
19 Reynolds Tobacco Company that appeared in Lincoln,
20 Nebraska.
21 THE COURT: From where, what publication?
22 THE WITNESS: The Lincoln newspaper.

23 THE COURT: Is it?
24 THE WITNESS: Yes.
25 THE COURT: Is there a heading?
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

82

1 THE WITNESS: I don't know if it's on this
2 slide. There is. I can't read it from here. I have
3 the actual hard copy of this, if you --
4 THE COURT: With you?
5 THE WITNESS: Not personally with me.
6 Probably back in Stanley's office.
7 THE COURT: We can get it?
8 THE WITNESS: Yes.
9 THE COURT: I can't read what it says from
10 here.
11 THE WITNESS: Well, it's the first cigarette
12 with 80 percent less secondhand smoke, and virtually no
13 lingering odor. Even more amazing, it does all of
14 this, and yes, it tastes good.
15 MR. KIRBY: There is no secondhand smoke
16 issue in this case, Your Honor, and the Eclipse
17 cigarette didn't come out until 1997 -- 1996.
18 MR. NEWSOM: Never been marketed in Florida.
19 THE COURT: What is the reason to produce
20 this?
21 THE WITNESS: Because of my research again an
22 related to my study on defects of cigarette filter
23 fibers. We just studied a paper that shows that one of
24 the problems with the Eclipse product is the glass
25 insulating material which is located --
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

83

1 THE COURT: I see it in the right.
2 THE WITNESS: Right up there, B, actually
3 migrates onto the paper and on to the filter tip end of
4 this cigarette; and smokers, when they put an Eclipse
5 cigarette in their mouth, are getting exposed to
6 glass --
7 THE COURT: Fiber.
8 THE WITNESS: That's right.
9 MR. NEWSOM: Your Honor, this is a class of
10 Florida residents. This product has never ever been
11 sold in Florida. It wasn't marketed at all until after
12 the class was certified.
13 There is no allegation about it in the
14 Complaint. It has nothing whatsoever to do with this
15 lawsuit.
16 THE COURT: Overruled.
17 THE WITNESS: This is just showing, from the
18 pictures from the articles, the glass that's coming off
19 the end, the glass fibers, filaments and particles.
20 And this is just showing you the evidence of glass that
21 we counted up on the filter tips. And it was -- over
22 95 percent of the filters that we examined in the packs
23 that we looked at, had glass.
24 THE COURT: Go ahead.
25 MR. NEWSOM: Your Honor, we have the same
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

84

1 objections to all of these.

2 THE COURT: I know.
3 MR. NEWSOM: But all of these are also taken
4 directly from his article, which in itself is not
5 admissible. They are copied directly out of his
6 article.
7 THE COURT: Overruled.
8 THE WITNESS: So that's the glass -- this is
9 another cigarette. Accord, which I mentioned earlier.
10 And part of your -- this relates to safe cigarettes.
11 Both Eclipse and Accord could be construed as unique
12 products because they substantially reduce the
13 biological activity of the tar that is produced.
14 This is a product that Philip Morris
15 currently is marketing in Richmond, Virginia. This is
16 what it looks like.
17 MR. HEIM: Could we go back a minute, please?
18 THE WITNESS: Sure. This I clipped out of
19 NewsWeek, took a slide of it.
20 MR. NEWSOM: The text is something NewsWeek
21 wrote?
22 THE WITNESS: Yes. I'm assuming, it was --
23 MR. NEWSOM: Not something Philip Morris
24 wrote?
25 THE WITNESS: I'm assuming it came after
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

85

1 Philip Morris' press conference held after the
2 marketing of this product.
3 MR. NEWSOM: Your Honor, we don't know where
4 it appeared. That's something written in a magazine.
5 Obviously that makes it pure hearsay.
6 THE COURT: Yeah, you can take that one out.
7 THE WITNESS: What consumers are actually
8 getting exposed to.
9 THE COURT: Yes.
10 THE WITNESS: This is actually looking at an
11 Accord cigarette from some of our studies.
12 THE COURT: Yes.
13 THE WITNESS: This is smoked and nonsmoked
14 Accord.
15 MR. HEIM: What is the relevance, Judge?
16 THE COURT: Shows how it functions.
17 MR. HEIM: I know. What is the relevance of
18 that?
19 THE COURT: To show how it's made and why.
20 There may be some other things.
21 MR. HEIM: I will object on relevance
22 grounds, hearsay grounds.
23 THE WITNESS: This is looking at the tobacco
24 that's left over after you smoke the cigarette, smoked
25 and nonsmoked.

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

86

1 THE COURT: Okay.
2 THE WITNESS: That's the end.
3 THE COURT: All right. Do I have any more?
4 This is --
5 MR. NEWSOM: Again, we object to these.
6 Relating to the Winston "No Additives" campaign, no
7 allegation -- in the lawsuit he has testified that he
8 is not planning to talk about additives. He's also

9 testified that he's qualified to talk about additives.
10 MR. KIRBY: And the product was not marketed
11 until August of 1997, Your Honor.
12 THE COURT: Okay. I know --
13 MR. KIRBY: Has no place.
14 THE COURT: Then you've got it preserved.
15 MR. ROSENBLATT: What I'm going to do after
16 the jury comes in is just have Dr. Cummings stand
17 here --
18 THE COURT: I don't want to go through a
19 whole harangue with these things. Very quickly run
20 through them.
21 MR. ROSENBLATT: The basics, just the basics.
22 MR. SCHNEIDER: Your Honor --
23 MR. ROSENBLATT: You understand that? What
24 each is and really the basics. No background.
25 Your Honor, since, over my objection, you're
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

87

1 permitting this witness to show slides about the Accord
2 product, I would like the one slide that Your Honor
3 took out to be put back in.
4 THE COURT: Which one is that?
5 MR. HEIM: The one that says: It is likely
6 to turn youth off from smoking. The one that appeared
7 in NewsWeek.
8 THE COURT: You want to put it in? Put it
9 in. I don't care.
10 MR. HEIM: Since the others are going to be
11 put in, I will put it in for completeness. And I would
12 also ask that this slide show be at least conducted in
13 terms of a question and answer and not long narrative
14 speeches about slides.
15 THE COURT: Okay.
16 MR. SCHNEIDER: Your Honor, just one other
17 thing for the purpose of the record. With respect to
18 the pictures of the lungs, that American Lung
19 Association poster, I think that Your Honor would agree
20 that if that poster was stuck to the wall outside the
21 courtroom, that it's hearsay. And to bring it in here
22 and show it to the jury for the truth isn't proper. I
23 wanted to make sure I made that objection clearly to
24 Your Honor. That's why I object to it.
25 But the other point I wanted to make is with
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

88

1 respect to the Eddie Murphy/Lucky Strikes, there's no
2 foundation that Lucky Strike had anything to do with
3 setting up Eddie Murphy with that picture. But it's
4 being put before the jury to infer that. I would also
5 object to that ground as well.
6 THE COURT: Okay. Same ruling.
7 All right. Let's get the jury in.
8 THE BAILIFF: Bringing in the jury.
9 (The jurors entered the courtroom.)
10 THE COURT: All right. Let's proceed.
11 BY MR. ROSENBLATT:
12 Q. Dr. Cummings, you've got some slides with you
13 which you can show up on that screen. And what I would
14 like you to do, show one slide at a time, and then just
15 explain basically what each slide represents.

16 But before we get to that, in terms of these
17 slides, tell the jury how and for what purpose you used
18 them in your everyday work.

19 A. These are slides that I put together for
20 presentations to various community groups, students,
21 smokers.

22 They're based on my research, as well as
23 other people's research and some of the work that was
24 done at Roswell Park, dating back in the '50s and '60s,
25 to explain health effects of smoking, as well as

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

89

1 marketing of tobacco products, and some of our work on
2 cigarette design.

3 Q. Okay. So why don't you come down and start
4 at the beginning.

5 THE COURT: Some of this stuff may be
6 difficult for you to see. There will be some slides
7 which have some writing on it, which are very difficult
8 to read, especially if you're way back over on this
9 end.

10 So just be more or less advised that it's
11 there for a presentation in general, a general
12 presentation, not very specific, every word.

13 A. I use this particular slide, Anatomy of a
14 Cigarette, when I introduce the concept to groups, that
15 cigarettes are not a simple, little device where you
16 just chop up tobacco and roll it in a piece of paper
17 and put it in your mouth; that it's actually a
18 highly-engineered product, and -- but most people think
19 that cigarettes are just tobacco leaves blended
20 together like a wine maker would make wine. It's
21 really not that at all. It's a very scientific process
22 they go through.

23 In order to introduce people, particularly in
24 Buffalo, New York, where I do many of these
25 presentations -- people don't even know what tobacco

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

90

1 is. This is actually some pictures of tobacco leaves.

2 And it's interesting to note, when I show
3 this slide, if you were to take these leaves and test
4 them for nicotine content, you would find the amount of
5 nicotine to vary, would vary quite a bit from leaf to
6 leaf.

7 So if you were to simply take tobacco leaves,
8 chop them up and roll it in a piece of paper and smoke
9 it, you would find on some cigarettes you would get a
10 lot of nicotine, and others you would get hardly any.
11 It would not be uniform.

12 That's not the case in cigarettes that are
13 sold on the shelf today. Each cigarette is designed to
14 give you the precise amount of nicotine that the pack
15 will tell you.

16 And that's important, because people, in
17 fact, I believe smoke for the nicotine that they're
18 getting in the cigarettes.

19 In fact, there are elements of cigarettes
20 that the tobacco itself -- I will go back to that
21 particular slide on tobacco. Much of the tobacco
22 that's in a cigarette today, or a percentage of the

23 tobacco that's in cigarettes today, is not even real
24 tobacco; it is processed material called reconstituted
25 tobacco, which goes through a series of extraction
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

91

1 processes.
2 It's basically like a piece of paper treated
3 with tobacco extract, which is a way of providing a
4 uniform delivery system for nicotine. They grind up
5 the materials, the stems, the stalks --
6 MR. HEIM: Your Honor, this is the narrative
7 approach that I objected to two minutes ago, five
8 minutes ago.
9 BY MR. ROSENBLATT:
10 Q. Is this pretty much what you do in your
11 presentation?
12 THE COURT: We're going to cut the lecture
13 short. Okay?
14 THE WITNESS: I'm trying to get through it
15 quickly.
16 THE COURT: I understand. But be advised
17 that the jury has already been advised of all this
18 information from other sources, witnesses at trial. So
19 they are pretty much familiar with what you are saying.
20 THE WITNESS: Okay.
21 A. (Continuing) At any rate, there actually is
22 a very simple test you can do to see how much is real
23 and how much is the paper tobacco in a cigarette.
24 One of the things I explain to people when I
25 talk to them is you can take the tobacco out of a
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

92

1 column, drop it in a glass of water and see it
2 separate.
3 The fake tobacco, the reconstituted paper
4 tobacco, sinks to the bottom. The color of the water
5 will change to a brown or yellow color because of the
6 coloring agents that are applied to the reconstituted
7 tobacco, and the real tobacco will float on the
8 surface. Real tobacco has a little wax on the leaves
9 that causes it to float.
10 We also talk about the filter in a cigarette.
11 And you heard me earlier talking about some of our
12 research on filter defects.
13 Cigarette filters are made out of cellulose
14 acetate, paper, plastic and glue, a plasticizer that
15 is used to glue and get the fibers to adhere together.
16 I mentioned earlier today that if you look at
17 a Marlboro cigarette under a high-powered microscope,
18 this is what you'll see, the fibers literally dangling
19 off the end.
20 We've done a number of studies to look at how
21 easily the fibers come off. I mentioned the tongue
22 test, where you can touch it to your tongue. We've
23 done it with beef liver because we didn't want people
24 actually exposed to the fibers.
25 The fibers, when you smoke the cigarette, get
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

93

1 tar adhering onto them. The whitish appearance is

2 caused by the milky pigment, titanium dioxide that they
3 paint on the fibers.

4 The tipping paper, which is the brown paper
5 that you put in your mouth that gives it some sort of
6 the cork-colored appearance found on many cigarettes,
7 is actually unique, too, because if you were to put a
8 piece of paper in your mouth repeatedly, seven or eight
9 times, as a smoker would do, the piece of paper would
10 fall apart because of the moisture to the paper.

11 Of course, this does not happen because of
12 the silicon that is sprayed on the outside of the paper
13 to prevent the paper from falling apart.

14 And smokers are rather surprised to find that
15 when they are smoking a filtered cigarette, that they
16 are, in fact, getting exposed to fibers.

17 This is a filter fiber we have harvested out
18 of the lung tissue of a smoker at Roswell Park. We
19 find quite a number of these fibers in the lung tissue.
20 You can see it's coated with the tar from the
21 cigarette.

22 Those are macrophages, lung cells in the lung
23 of this individual, that are adhering to this foreign
24 material. A plastic in your lungs is never going to go
25 away. Plastic filter fibers will never go away in your

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

94

1 lungs, because your lungs are a sterile environment and
2 plastic doesn't biodegrade easily.

3 But the plastic filter fibers probably stay
4 in the lungs of smokers, which may account for the
5 effects that you see in the lung, in terms of
6 long-term; even ex-smokers who quit and years later
7 develop serious lung disease.

8 The macrophages are for attacking this,
9 because it represents an immunologic response, and they
10 are attacking the foreign material, not only the tar.

11 You can see the tar from the fiber has
12 migrated onto the surrounding cells.

13 MR. HEIM: Your Honor, move to strike the
14 last as speculative, unsupported, lack of foundation.

15 THE COURT: Overruled.

16 A. (Continuing) This is just a list of some of
17 the chemicals you find in cigarette smoke.

18 We do this for the public because most of the
19 chemicals that you find in cigarette smoke have been
20 identified because most of the words are so long, the
21 words are difficult to pronounce. So we've taken a
22 smaller list and applied it to some of the common
23 things people may be aware of, such as floor cleaner
24 for ammonia; lighter fluid for butane; hydrogen
25 cyanide, which is poisonous gas; Polonium-210, which is

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

95

1 a radioactive material.

2 Tobacco plants tend to concentrate things
3 from the soil, radioactive material, which occurs
4 naturally in the soil, plus certain fertilizers used
5 for growing tobacco break down into radioactive
6 material which is why we find the Polonium-210 in
7 cigarettes.

8 This is a picture of a cigarette machine that

9 we used to have at Roswell Park Cancer Institute. As I
10 mentioned, during the '50s we did a lot of the work on
11 measuring tar and nicotine and carbon monoxide content
12 of cigarettes. In fact, we did produce a list for the
13 public that came out before this was mandated by the
14 federal government.

15 This is a pump at the bottom that's going to
16 be pulling out all these cigarettes. We actually
17 labeled this thing "Pete the dragon," because we would
18 load up Pete with all the cigarettes; we would light
19 them up, and the pump would pull the cigarettes through
20 simulating what a smoker would be doing in terms of the
21 puff and puff volume they would be getting.

22 This is just to show you how much tar you
23 would get from a pack-a-day smoker for one year's worth
24 of smoking.

25 So, if you were smoking 365 days out of the
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

96

1 year for one year, that's the equivalent amount of tar
2 that a smoker would be extracting from the cigarettes
3 that they are getting. That's equivalent to roughly a
4 coffee cup full of tar.

5 Years ago, back in the '50s again, when we
6 didn't know what was perhaps causing the higher rates
7 of cancer and this link between smoking that had been
8 observed, they began to look at tar as one of the
9 possible causes. And so we did mice painting
10 experiments at Roswell Park.

11 This is a picture from one of the studies
12 that was done at Roswell, where we're painting up the
13 back of a -- we would shave the mouse and paint the tar
14 on the back.

15 And this is just showing you what happens to
16 the skin of a mouse when you paint it up with the tar.
17 That's a tumor that's been caused by the tar.

18 Now the stuff obviously goes into your lungs,
19 and when I talk to groups, I talk to them about your
20 lungs are sort of like a plumbing system. You have a
21 tube that goes down your airways, and your lungs -- the
22 airways get smaller and smaller the further down you go
23 in the airways, the peripheral part of the airways.

24 At the end of those airways you have air
25 sacs. Air sacs are important for gas exchange.

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

97

1 When you breathe in oxygen, your red blood
2 cells have to get that oxygen and carry it around to
3 your tissues and so on.

4 And smoking affects the air sacs. It also
5 affects the small air passageways, and it does this
6 through a couple of mechanisms.

7 One of the effects is on the cilia. You
8 probably remember back in 8th grade biology class
9 somebody told you about these cilia or hair-like
10 structures in your airways or respiratory tract that
11 are designed to keep your airways clean.

12 These are a picture of healthy cilia,
13 obviously under a high-powered microscope, that line
14 your air passageways.

15 When you are exposed to dust and particles in

16 the environment, these will trap the dust and particles
17 and carry them up and out your airway.

18 Unfortunately, some of the chemicals in
19 tobacco smoke paralyze the cilia. These are the cilia
20 of a cigarette smoker, and you can see the cilia here
21 on the left is flopped over. They become paralyzed.

22 The cilia in the center there looks like it
23 is no longer functioning at all.

24 The body has a way of compensating when the
25 cilia do not work properly. And this little blob in

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

98

1 the lower right is what we call gobular cells. The
2 gobular cells tend to go in overtime. They put out
3 mucus or phlegm in the airway.

4 This is one of the reasons why smokers who
5 smoke for many, many years notice a smoking cough.
6 They begin to clog the airways.

7 When they get up in the morning they are not
8 getting the oxygen they want, so they cough to
9 mechanically move the phlegm up and out.

10 You can block off 50 percent of the small air
11 passageways with the mucus without noticing any
12 significant signs of illness, so a lot of people have
13 what we call small airways dysfunction as a result of
14 cigarette smoking. This is related to the effect of
15 the chemicals from tobacco smoke on the cilia.

16 It's one of the reasons that smokers have
17 more respiratory problems. When you quit smoking, it's
18 very common for smokers to -- you notice they're
19 clearing their throat. They may actually cough up
20 mucus for the first few days they quit, or weeks, as
21 the cilia wake up, and unclog the airways. The
22 cessation of smoking is really a benefit, as the cilia
23 begin to regenerate themselves.

24 You have shortness of breath and some of
25 these other things because you're not getting oxygen

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

99

1 directly as an effect of the paralyzed cilia. So in
2 the airways, the stuff ends up in your lungs.

3 This is just a picture that shows a lung of a
4 nonsmoker on the left and the lung of a cigarette
5 smoker on the right.

6 The blackish part is from the tar that's
7 accumulated on this part of the body. The whitish
8 part -- this is a cancerous lung. The whitish part of
9 this lung is a cancer. That's what the surgeon would
10 say if they were to open up a person. They would see
11 this whitish area. That's because cancer is the
12 uncontrolled growth of cells; the cells go haywire.

13 These cells have not been in the body as long
14 because they are reproduced at a rapid rate, and in
15 fact taking over, literally taking over, this organ.

16 This lung is also misshaped because this lung
17 also has emphysema. Emphysema is a disease that eats
18 away at those little air sacs. When those are
19 destroyed, you don't exchange oxygen well and can't
20 breathe, which is why people with emphysema are
21 literally gasping for their breath, trying to put more
22 oxygen into their system.

23 That's a little presentation on some of the
24 health effects of smoking that we do.
25 This next group here is just talking a little
 TAYLOR, JONOVIC, WHITE & GENDRON
 COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

100

1 bit about some of the things that I mentioned earlier
2 about our work on marketing to youth. It is an
3 advertisement from the R.J. Reynolds Tobacco Company
4 that I clipped out of Parent Magazine about ten years
5 ago where they were claiming: We don't advertise to
6 children.

7 As I've said, some of my research and some of
8 the work that I'm currently doing with our studies on
9 marketing -- the marketing documents from the industry
10 would suggest otherwise.

11 This is just some examples of actual
12 advertising which we believe is aimed at youth. This
13 is from Rolling Stone magazine. I clipped this out of
14 Rolling Stone. This was back when Joe Camel was
15 operating in the -- I believe 1991 or '92. I don't
16 know the exact date of this particular ad, but it says:
17 Go ahead. It's on me.

18 This was a promotion they did with Ticketron
19 for getting discounted tickets to concerts.

20 This is from Sports Illustrated, Marlboro
21 sports calendar, because a lot of the advertising is
22 affiliated or associated with things that particularly
23 young people would want to do. I'm not saying that old
24 people don't like sports, but young people -- I have
25 three young boys, and they certainly enjoy sports and

 TAYLOR, JONOVIC, WHITE & GENDRON
 COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

101

1 hockey.

2 MS. LUTHER: Objection, Your Honor.

3 THE COURT: Sustained.

4 A. (Continuing) This is an example of a product
5 placement. This is Eddie Murphy in -- I believe this
6 was Beverly Hills Cop, where you have a product
7 placement for Lucky Strike cigarettes. There are many
8 movies. Superman II is a movie where Philip Morris
9 paid the producer of the movie --

10 MR. HEIM: Objection, Your Honor.

11 THE COURT: I will sustain that.

12 A. (Continuing) And there are product
13 placements that have been done in many movies, and also
14 just turning product over to TV producers and movie
15 producers to get their products placed in movies. This
16 is just Lucky Strike as an example.

17 This is an another example of product
18 marketing. This is an ad for Camel cigarettes: Get
19 Another Smooth Move With a Free Pack.

20 One of the things we've learned in our
21 research is that a lot of kids get started smoking by
22 getting their cigarettes from their friends who smoke.
23 This is the way a lot of young people get introduced.

24 A very effective marketing tool for
25 exploiting the fact that you're sort of interacting

 TAYLOR, JONOVIC, WHITE & GENDRON
 COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

102

1 with your friends is if you have free cigarettes to

2 hand out. Because it's often done at social events
3 like parties or going out to the mall or whatever.
4 Anyway, this is an ad for a free pack of
5 Camels, and you see this very frequently for products
6 such as Newport and Marlboro and Camel, which is
7 particularly popular among young people.

8 Okay. Move on to a little bit on addiction.
9 This is from the study that I mentioned this morning
10 that was cited in our Institute of Medicine report,
11 which I coauthored, on nicotine addiction in children.

12 And this is from the University of Michigan
13 studies where they had surveyed high school seniors --
14 actually, their surveys, by the way, are quite
15 extensive. They just don't go out and find 100 kids.
16 Their surveys involve thousands of kids, about 10,000
17 annually, and they've been doing this since 1975.

18 But if you break down the data they collected
19 on high school seniors, if you take 100 high school
20 smokers, over half, 53 percent, reported they've
21 unsuccessfully tried to quit smoking. So, they already
22 regret their decision to smoke and are struggling to
23 quit.

24 95 percent, however, said they would quit
25 smoking within five years. When they went back six

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

103

1 years later, only 25 out of that 100 had succeeded. So
2 they had already recruited a number of smokers, who are
3 probably still smoking today.

4 Anyway, it was an indication that perhaps
5 young people can get addicted at a young age, which is
6 counter to some of the public statements we have heard
7 over the years, including the tobacco company
8 executives in 1994, when they testified to Congress
9 that tobacco or cigarettes are not addictive.

10 However, this is in contrast to the Surgeon
11 General's conclusion in 1988, the Surgeon General's
12 Report. The three main conclusions of that report are
13 that cigarettes and other forms of tobacco are
14 addicting; that nicotine is, in fact, the drug in
15 tobacco that causes addiction; and the pharmacologic
16 and behavioral processes that determine tobacco
17 addiction are similar to those that determine addiction
18 to drugs such as heroin and cocaine.

19 One of the bases for doing that and one of
20 the bases for many organizations that have looked at --
21 and there are many that have concluded that nicotine is
22 the addictive agents in cigarettes, and cigarette
23 smoking is an addiction -- is based on looking at
24 various criteria for drug dependents; that smoking is a
25 highly controlled and compulsive behavior for many

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

104

1 people.

2 Many people will have a cigarette hanging out
3 of their mouth before they put their foot on the floor
4 the first thing in the morning.

5 They will smoke every 20 or 30 minutes
6 throughout the day because nicotine, while it is a very
7 fast-acting drug affecting the brain, loses its effect
8 in about 20 or 30 minutes, and smokers get that empty

9 feeling, almost like a hunger pang in the pit of their
10 stomach looking for that next cigarette, and they feel
11 better when they get it.

12 Nicotine has some very positive effects for
13 smokers in terms of stimulating the brain, affecting
14 arousal. It's reinforcing. There is a very
15 stereotypic pattern to its use. A lot of people smoke
16 when they have a cup of coffee, after a meal, after
17 drinking.

18 By the way, when you drink and are under
19 stress and after a meal, basically we found nicotine
20 levels are leaving the body at a faster rate, so the
21 need for nicotine would be greater, which probably
22 explains the intense smoking under those circumstances.

23 Nicotine dependency doesn't produce after one
24 cigarette. You have to develop a tolerance. It starts
25 slowly over time. So teenagers are not going out

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

105

1 buying two packs of cigarettes. They will bum
2 cigarettes from friends here and there. Eventually,
3 when they feel a little bit more need for the drug,
4 which they are feeling is the benefit they are looking
5 for in terms of the nicotine, they will start
6 purchasing the product; but usually not smoking even a
7 pack a day.

8 Once they get up to that, purchasing a half a
9 pack or a pack a day, they're probably smoking
10 predominantly for the effects of nicotine rather than
11 the social effects that probably got them into smoking
12 to begin with.

13 Here is just a summary of some of the effects
14 of nicotine on the brain. Nicotine is a drug that has
15 an effect rapidly because it's inhaled as a vapor into
16 the lungs, a large surface area, unlike putting it in a
17 band-aid and wearing a patch. Nicotine is absorbed
18 much more slowly through the skin.

19 The effect of nicotine, particularly the
20 rapid effect -- and one of the criteria for drug
21 addiction is looking at speed of delivery of a drug.
22 And as I mentioned, nicotine's speed of delivery is
23 unparalleled compared to many drugs out there and
24 considered addictive.

25 You have the effects of the dopamine centers

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

106

1 on the brain which affect pleasure; appetite
2 suppression. It acts as an arousal agent. Its --
3 nicotine's effect is as a stimulant. It affects
4 memory, mood modulation, and anxiety reduction.

5 In fact, if you look at this, this looks
6 great, that nicotine has these positive effects. But
7 they are directly related to speed of delivery.

8 This is just looking at the blood
9 concentrations with delivery of nicotine, as you can
10 see there in the center chart on the right labeled B,
11 within seconds after a drag on a cigarette.

12 In fact, within seven to ten minutes, you
13 have your peak levels of nicotine in the blood, but
14 that begins to wear off very rapidly. Within about 20,
15 30 minutes, you can see the quick decline.

16 This is more evident if you look at arterial
17 blood rather than venous blood, in contrast to
18 transdermal nicotine, where it takes, in fact, several
19 hours really to get the nicotine levels built up at
20 all.

21 Of course, you are at a steady state. A
22 smoker is getting that reinforcing effect because they
23 get the spike and then the valley and the spike.

24 Many people end up finding themselves in a
25 nicotine addiction cycle. They use nicotine because

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

107

1 they get some pleasurable effect out of it; it helps
2 them concentrate, enhances their performance. They
3 develop a tolerance. They need more and more of the
4 drug to get the physical effects. They develop a
5 dependence on the drug, and with absence of the drug,
6 even for 20 or 30 minutes, they begin to feel uneasy.

7 If that absence goes a longer period of time,
8 they begin to feel even more uneasy, which produces
9 withdrawal symptoms that normally appear within 24
10 hours after a person is abstinent from nicotine. It
11 takes three to four days to get nicotine out of the
12 system.

13 Nicotine use is then applied to
14 self-medicate, because a hit on a cigarette makes you
15 feel better. As a matter of fact, if you watch a
16 person smoke a cigarette, usually the first two drags
17 on the cigarette will be a little more intense.

18 You will see the cone on the cigarette get
19 hotter. You inhale the smoke and the cone is a lot
20 hotter, and the temperature of the product is very
21 critical to the delivery in the nicotine to the smoker,
22 which is one of the reasons cigarette companies put
23 accelerating agents on their paper. It doesn't burn
24 like normal paper. It continues to burn and control
25 the temperature, which is related to nicotine.

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

108

1 The final set of slides that I have relate to
2 the new products; and new products, one might even
3 construe as potentially safer products that the
4 industry has devised, and in fact, are even marketing
5 right now.

6 This is a product called Eclipse. It's
7 produced by the R.J. Reynolds Tobacco Company. Several
8 years ago I was invited to a meeting at the R.J.
9 Reynolds Tobacco Company to be introduced to this
10 product before it was launched in a test market in
11 Chattanooga, Tennessee, where I spent the day having
12 their scientists explain to me the benefits of Eclipse.

13 And, in fact, Eclipse offers some substantial
14 benefits because it's not like any conventional
15 cigarette that's currently being sold. This is a
16 product that heats rather than burns tobacco. And as a
17 result, when you heat it rather than burning it, you're
18 not generating the pyrolysis products -- the tar, in
19 other words -- that you get when you burn a
20 conventional cigarette.

21 As a result of not burning anything, just
22 heating -- and what you heat is a carbon tip, which I

23 will show you a picture of in a second -- you are
24 basically -- when you are just heating it, you're
25 basically not generating any tar or dirt or sidestream

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

109

1 smoke, which is why they can make the claim "less
2 sidestream smoke."

3 This is what an Eclipse cigarette looks like.
4 It actually looks like a conventional cigarette. The
5 one labeled G is showing you the Eclipse cigarette
6 unsmoked. The one that's labeled H is a
7 completely-smoked Eclipse cigarette. That's what it
8 looks like after it is done.

9 So, because you are heating this material
10 rather than burning it, you're not actually going to
11 have anything to snub out. You have the spent item
12 there, H.

13 The inside of it does not look like a
14 conventional cigarette at all. In fact, this is not
15 blending tobacco in any way whatsoever. This is a
16 completely nonnatural, completely manufactured product.

17 The carbon tip at the end is literally like a
18 high-processed carbon, like you would find in your
19 charcoal grill; carbon like that that you would light.
20 It's the heat generator for this.

21 They wrap that with a sheath of tobacco.
22 They do this because the sheath of tobacco, when you
23 light the cigarette, will give you the smell of the
24 smoke, and also the first two drags will give you a
25 little bit of tar. So you get this tar a little bit

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

110

1 because of the first two drags of the cigarette, I was
2 told when I attended the meeting at Reynolds, which is
3 what dictates whether a smoker will like a cigarette or
4 not.

5 The sheath of tobacco is wrapped in
6 fiberglass. And that fiberglass is there as an
7 insulator because the carbon tip, when it's burning,
8 will lose mass, and it would fall out on the ground and
9 you would have a lit charcoal briquet that would cause
10 a fire. This would be a problem.

11 So they have fiberglass that melts around the
12 carbon tip. That also prevents burning. When you put
13 the product down, the carbon tip is not going to cause
14 a fire. In fact, this product is probably a lot more
15 fire safe than the conventional cigarette, because of
16 the glass wrap.

17 E is tobacco. It's actually very
18 light-colored tobacco. It's a reconstituted tobacco
19 sheath that's impregnated with glycerin. The glycerol
20 in this product is extensive, about 50 percent.

21 This is done because that's the carrying
22 agent for nicotine in the vapor to the smoker. There's
23 also -- you can't see here, but on the inside of an
24 Eclipse cigarette there is an aluminum foil on this
25 part labeled E. There is an inner sheath of aluminum

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

111

1 foil almost like the aluminum foil you would find from

2 a stick of gum. That is wrapped on the inside with
3 what appears to be tobacco paper, and that is there as
4 a result of preventing spotting of the glycerin, which
5 is so moist on the paper.

6 And also acting as a heat conductor, because
7 this super-heats the material. You generate a nicotine
8 vapor, a few bits of tar that you get from the sheath
9 of tobacco that's wrapped around the carbon tip.
10 There's also tobacco bits impregnated inside the carbon
11 tip, and then you pass it over the second column of
12 genetically-engineered, reconstituted tobacco and then
13 into the smoker.

14 So they're literally getting a nicotine
15 vapor. This is a nicotine delivery device.

16 There's a little problem with this product,
17 however. Actually, my interest, and one of the reasons
18 I agreed to go down to the R.J. Reynolds Tobacco
19 Company to meet with their scientists when they invited
20 me to their meeting to learn about their product, was
21 this product generates a lot less biological activity.

22 In other words, if you compare the tar from
23 an Eclipse cigarette to the tar from a conventional
24 cigarette, you would find that it's very different.
25 It's different in terms of the chemicals that are

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

112

1 generated and the biological activity as measured by
2 things like those mouse painting experiments.

3 None of the mice with Eclipse tar get the
4 tumors, yet they get the tumors with the tar of a
5 conventional cigarette. This is very important. This
6 may actually be indicative if there is potentially a
7 safer product out there.

8 Although none of the advertising tells
9 consumers that the biological activity of the Eclipse
10 cigarette is lower, which I find interesting, because
11 secondhand smoke -- well, smokers are concerned about
12 that. The main thing they are concerned about is
13 cancer and heart disease and emphysema. And if they
14 could smoke and not get those things, that would
15 certainly be a great benefit.

16 And none of that has been communicated to the
17 consumers. Although, when I was at Reynolds, I learned
18 that a large share of their employees have been smoking
19 Premier cigarettes and Eclipse cigarettes. They get
20 these free, at their plant.

21 MR. NEWSOM: Your Honor, I object to what he
22 says. It's hearsay as to what he learned at Reynolds.

23 THE COURT: Sustained.

24 Let's move on with what this shows.

25 A. (Continuing) Okay. I can move on to this

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

113

1 particular study. This relates however to the problem
2 of the glass.

3 When I was at the meeting at Reynolds, we
4 asked the folks there about the glass insulator,
5 whether it breaks off and whether there might be any
6 problem from the heat source end migrating down to the
7 filter tip.

8 If you look at an Eclipse cigarette, you can

9 literally see the glass dangling right off the end of
10 the heat source end. They make this product very
11 similar to making a regular cigarette. High
12 speed-making machines, they cut the carbon tip and the
13 glass, and the glass shatters, and you get fragments,
14 bits and particles.

15 So we were curious as to whether these glass
16 fibers would end up on the filter tip end. And so we
17 did a study to look at this. You can see some of the
18 particles there from the glass.

19 We looked at the inside of the packs. We got
20 some Eclipse cigarettes that were available in
21 Chattanooga and also Lincoln, Nebraska, their two test
22 markets.

23 We opened up the packs very carefully and
24 basically counted up the glass fibers that were at the
25 bottom of the pack. And there were thousands; in fact,

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

114

1 about -- on an average of 7,000 bits, fragments of
2 glass dust at the bottom of the pack.

3 Then we looked very carefully at the filters
4 to see whether the cellulose acetate, the plastic
5 matrix that a person is going to put into their mouth,
6 actually had any of these glass fibers there.

7 We were told, by the way, at Reynolds, that
8 this is a not a problem; that smokers would not get
9 exposed to the glass.

10 Our study concluded otherwise. In fact, as
11 you can see, out of the different cigarettes that we
12 looked at, the various packs, 95 percent of the
13 cigarettes in the Eclipse packs were contaminated with
14 glass. That means that every time a smoker puts an
15 Eclipse cigarette in their mouth or even touches an
16 Eclipse cigarette, they are getting exposed to glass.

17 Now, this is not glass you can easily see.
18 It's broken-up dust, basically. Glass, by the way, is
19 potentially a very dangerous thing to inhale into your
20 lungs, and this is putting it directly into your body.
21 So we believe that Eclipse smokers are ingesting and
22 inhaling, in addition to plastic, cellulose acetate
23 filter fibers, also glass with the Eclipse cigarette.

24 And this is just showing you, again, the
25 glass material on the Eclipse. This is on the filter

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

115

1 end. A is on the inside of the filter. If you see an
2 Eclipse cigarette, actually the filter is more of a
3 holder, it's not a filtering device, because there is
4 no tar or very little tar to filter.

5 So they actually have a hole they drill in
6 it. It directs you right to the column. They do this
7 so you can pull the nicotine with less resistance. One
8 of the problems with earlier versions of Eclipse and
9 Premier cigarette that preceded it was keeping the
10 product lit and having to suck very hard. So they
11 tried to address that problem by drilling a hole in the
12 filter.

13 It's not a filter, really; it's a cigarette
14 holder. But you can see the glass contaminating this.

15 We've done a study to look at all the

16 marketing material that Reynolds has put out on Eclipse
17 cigarette in Lincoln and Chattanooga, and we have not
18 come across anything that mentions the issue of --

19 MR. KIRBY: Objection, Your Honor;
20 preemption.

21 THE COURT: No. Overruled.

22 A. -- the glass.

23 In fact, they talk about it as an insulating
24 material. They don't talk about fiberglass, which is
25 what it is, and smokers are not aware of the fact they

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

116

1 are getting exposed to it.

2 This is another safe cigarette. This is a
3 product called Accord that is being marketed in
4 Richmond, Virginia by Philip Morris Tobacco Company.

5 And again, as an indication of the product
6 being a nicotine-delivery system for a smoker, I'm
7 interested in this product because I believe this
8 product does reduce the biological activity of the tar
9 that a smoker will be exposed to, although none of the
10 marketing material on this product informs the consumer
11 of that; although data that I have seen from the Philip
12 Morris Tobacco Company does tell you that the nature of
13 the tar and the smoke, the chemical constituency of it
14 is very different, and in fact has less biological
15 activity.

16 This is what the smoker gets. Actually, I
17 should go back just to show you what you get in your
18 kit. You get an explanation. Since this is a very new
19 smoking experience for people, it comes with a
20 videotape, a one year's owner's manual -- or a one-year
21 warranty for the recharging kit that you get for the
22 battery pack, which is the unit that you use to smoke
23 this.

24 This is referred to, by the way, in Philip
25 Morris posters on this product, which they presented,

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

117

1 called the electrically-heated cigarette. EHC is the
2 way they refer to it. So this is eliminating the need
3 for the carbon heat source. They are using electricity
4 now as the way of generating the nicotine.

5 You get an owner's manual. This is what the
6 smoker will do, puff on demand. You can take a puff on
7 this cigarette. The little window there tells you how
8 many puffs you have left. There is basically eight
9 puffs per cigarette that you get.

10 This is what the inside of an Accord
11 cigarette will look like. Accord is a stubby little
12 cigarette. It's not as long as a Marlboro or Winston
13 or Salem. The inside of it is quite uniquely designed.
14 You can see there's real tobacco inside the Accord
15 cigarette, in the middle part there.

16 But if you go to the third picture there, the
17 sheath there is reconstituted manufactured tobacco, and
18 this, in fact, is what gets burned or singed when you
19 inhale the smoke from an Accord cigarette. You really
20 get no natural tobacco whatsoever. You are really only
21 getting the slurry of reconstituted tobacco that's
22 impregnated on the inner sheath. And this is used to

23 control a lot of taste characteristics as well as
24 nicotine.
25 This is what a nonsmoked Accord looks like
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

118

1 and the completely-smoked Accord cigarette. Again, you
2 are not burning a column of tobacco, so you are
3 generating less tar, which is a good thing.
4 Unfortunately, we don't know what in fact is
5 in the slurry on the inside that you are singeing and
6 what the smoker is getting exposed to. That's a
7 question we are looking at.
8 Now, this is just to show you if you take the
9 tobacco, the entire weight or mass of tobacco. I
10 viewed the videotape for this that came with the
11 starter kit that I obtained. That particular videotape
12 talked about this product having natural tobacco in it.
13 So when we looked at the tobacco in the
14 smoked version versus the one that's unsmoked, this is
15 what you get. The mass or weight of this is identical,
16 because you are not burning tobacco.
17 This is not, in fact, like any cigarette that
18 I've ever thought of as a cigarette. I agree that it
19 probably has very little appeal to young people.
20 Because I've shown young people Eclipse and Accord, and
21 those products quite frankly have no appeal because
22 they have no smoke.
23 That's the end of my little talk.
24 THE COURT: Now, lunch break?
25 MR. ROSENBLATT: I would think so, Judge.
TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

119

1 THE COURT: We will take a lunch break now,
2 folks. Let's make it a quarter to 2:00. Okay? Give
3 you an hour and 15 minutes.
4 (The jurors exited the courtroom.)
5 THE COURT: Okay. Over the lunch break, the
6 same rules apply. You cannot talk about your testimony
7 or project your testimony with anybody, including the
8 lawyers. If you wish to have lunch with anybody, you
9 can do that. You just can't talk about the case.
10 THE WITNESS: Okay. Thank you.
11 (A lunch recess was taken at 12:30 p.m.)
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TAYLOR, JONOVIC, WHITE & GENDRON
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED